

TRANSPORTATION ACQUISITION MANUAL NOTICE

DATE ISSUED: July 10, 1996

Transportation Acquisition Manual (TAMNOTE) 96-03 SUMMARY OF ITEMS

TAM NOTE 96-03 is issued under the authority of the Transportation Acquisition Manual (TAM) and unless otherwise specified, all material contained in this TAM NOTE is effective on the date issued. The following Federal Acquisition Regulation (FAR) citations give the "agency head" authority to perform certain procurement related functions. Although a delegation package is currently in coordination within the Department, it has not been approved. Therefore, these authorities have not been redelegated by this TAM Notice.

<u>FAR Cite</u>	<u>Title/Description</u>
4.502(d)	Electronic commerce in contracting. re: agency head ensures electronic commerce system is OK before using FACNET.
4.505-2(a)(3)	Full certification [FACNET] re: agency head certifies agency has implemented FACNET.
4.506	Exemptions [FACNET] re: agency head allows exemptions after full FACNET.
11.103(a)	Market acceptance re: agency head may require offerors to demonstrate market acceptance.

- 23.404(b)(3) Procedures [**USE OF RECOVERED MATERIALS**]
re: agency head approves acquisition of EPA designated items which do not meet EPA or agency standards.
- 32.201 Statutory authority [**COMMERCIAL ITEM PURCHASE FINANCING**]
re: agency head determines terms and conditions for payment for commercial items.
- 33.102(b) General [**PROTESTS**]
re: agency head determines solicitation, proposed award, or award, does not comply with requirements of law or regulation.
- 37.113-1(a) Waiver of cost allowability limitations [**SEVERANCE PAYMENTS TO FOREIGN NATIONALS**]
re: agency head may waive cost allowability limitations on severance payments to foreign nationals.
- 37.113-2(b) Solicitation provision and contract clause [**SEVERANCE PAYMENTS TO FOREIGN NATIONALS**]
re: when agency head grants waiver of cost allowability limitations, applicable clause must be used.
- 37.204(a),
(b) and (d) Guidelines for determining availability of personnel [**ADVISORY AND ASSISTANCE SERVICES**]
re: agency head determines if sufficient skilled agency personnel are available to evaluate proposals, and, if not, determine which Federal agencies may have qualified personnel.
- 41.201(d)(2)
and (d)(3) Policy [**ACQUISITION OF UTILITY SERVICES**]
re: agency head may enter into shared energy contracts, purchase or transfer

electricity from a non-utility,
enter into I/A with Federal
power marketing agency, or
with electric utility under
authority or tariffs of FERC.

42.703-2(b)(1) Certificate of indirect costs
[INDIRECT COST RATES]
re: agency head may waive
requirement that contractor
certify final indirect cost
rates.

The TAM is hereby amended as specified below:

Item I--Changes to renumber subchapters to coincide with FAR numbering changes, to eliminate and transfer coverage to coincide with FAR changes, to reflect organizational title changes within DOT, to revise terminology and to update contract terms and conditions

Sections under Subchapter 1201.1 and section 1216.501 are renumbered to align with corresponding FAR numbering, Chapter 1210 has been retitled and previous coverage has been moved to appropriate Chapters to conform with FAR restructuring, and Chapter 1236 is changed to reflect FAR renumbering and new terminology.

Replacement pages: TOC, 1201-1 & 1201-2, TOC, 1213-1 thru 1213-3, Appendix A, 1213-4 & 1213-5, Appendix B, and Attachment 3 to Appendix C, and 1216-1 & 1216-2, and 1236-5 & 1236-6.

Item II--Deleting requirement for internal OA procedures

Section 1201.602-3(c)(7)(i) is changed to delete the requirement for OA procedures which is considered unnecessary.

Replacement page: 1201-9 & 1201-10.

Item III--Clarifications and editorial changes.

Sections 1201.403 and 1201.404 are changed for clarifications purposes or to delete obsolete information while the caption to Subchapter 1201.6 is changed to coincide with its corresponding FAR caption. Section 1202.170 is changed to delete OST as a HCA and added the Director, Transportation Administrative Service Center (TASC). TASC is also added to

Chapter 2, Appendix A. The Office Symbols in Chapter 2, Appendix A, are changed to update the title for M-61, add M-62, and delete M-63. Section 1216.306 was modified to delete language which is redundant due to a FAR change.

Replacement pages: Structure of the TAM to the Subchapter level (pages 1 thru 8), TOC, 1201-8, 1202-1, 1202-5 & 1202-6, and 1216-1.

Item IV--Deletion of Reporting Requirement

Delete coverage of subchapter 1203.804 on the submittal of consolidation reports of the SF LLL. This reporting requirement was removed by transmittal of the Federal Register Notice dated January 16, 1996, entitled "Interim Final Amendment to OMB's Governmentwide Guidance on Lobbying".

Replacement pages: 1203-7 & 1203-8

Item V--Administrative Matters

TAM 1204.602-7202 changed the "Office of the Secretary" to read "Transportation Administrative Service Center" as a result of the reorganization of the Office of the Assistant Secretary for Administration which became effective October 1, 1995.

Replacement pages: TOC, 1204-1 thru 1204-2.1, and 1204-5 & 1204-6

Item VI--Publicizing contract actions

The primary change is made to Section 1205.207 to change the symbol "OST" to read "TASC" (formerly OST) as a result of the reorganization of the Office of the Assistant Secretary for Administration which became effective October 1, 1995.

Replacement pages: 1205-1 thru 1205-4

Item VII--Changes to correct the title of the GSA publication listing debarred and suspended contractors and in the procedures for processing debarment and suspension actions

Change TAM 1209.403, Definitions, to delete paragraphs (a) and (b), and substitute the following new paragraphs (a) and (b); change to correct title for TAM 1209.404, and to correct the title of the list referred to in TAM 1209.404(c)(5); change TAM 1209.404(c)(4), Parties Excluded from Procurement Programs, to read ".....shall be maintained by the HCA for 3 years....."; change TAM 1209.406-3, Procedures, to revise the lead in to paragraph (a) and to add paragraphs (b) through (e) to

incorporate procedures deleted from TAR 1209.406-3; change TAM 1209.407-3, Procedures, to revise paragraph (a) and to add paragraphs (b) through (d) to incorporate procedures deleted from TAR 1209.407-3.

Replacement pages: TOC, 1209-1 through 1209-6.

Item VIII--Deletion/Restructuring of Coverage

Chapter 1210 is deleted in its entirety due to FAR changes. See FAR/TAM 1211 for guidance on developing agency requirements, except for 1210.006 and 1210.007 which have been deleted from the FAR.

Replacement pages: Chapter 1210, Market Research, RESERVED.

Item IX--Changes to delete reserved TAM Chapter 1211, and to add coverage for new TAM Chapter 1211, Describing Agency Needs

Change TAM Chapter 1211, Acquisition and Distribution of Commercial Products (Reserved) to read TAM Chapter 1211, Describing Agency Needs, change the Table of Contents page, add new TAM Subchapters 1211.1, 1211.5, and 1211.6, and add new TAM section 1211.104, 1211.104-70, 1211.502, 1211.602, 1211.603, and APPENDIX A,

Replacement page: TOC & 1211-1 thru 1211-5.

Item X--Title change.

Changed title of Chapter 1212 in accordance with FAR Part 12. Deleted text from TAM Chapter 1212 and included text in the appropriate part in accordance with FAR and TAR Parts 10, 11, and 12 restructuring.

Replacement pages: TOC

Item XI--Changes to allow use of Standard Form 1449, at the discretion of the OA, to the qualification requirements for prospective cardholders and editorial changes

TAM 1213, Appendix B, paragraph V.E.1 is changed to eliminate the requirement for finance office verification of a perspective cardholder's financial status.

Replacement page: TOC, 1213-1 thru 1213-18, 1213-67.2 thru 1213-77, 1213-83 & 1213-84, and 1213-87 & 1213-88

Item XII--Changes to the requirement for the use of weighted guidelines method at the regulatory dollar threshold for receipt of certified cost and pricing data.

TAM 1215.902(a)(1) changed to delete this requirement.

Replacement pages: 1215-7 & 1215-8

Item XIII--Changes and editorial corrections for Interagency Acquisitions under the Economy Act

Change TAM 1217.502, General, to delete the introductory sentence; change the title of TAM 1217.503 to read "Determinations and findings requirements"; and, change the FAR cite in TAM 1217.503(a) to read "....(FAR) 48 CFR 17.503."

Replacement pages: TOC, 1217-1 thru 1217-4

Item XIV--Small Business Programs

TAM Chapter 1219 changes were made to change the title of the Chapter and some subsections to coincide with the title changes made in Federal Acquisition Regulation Part 19. Requirements mandated by various S-40 memorandum have been also incorporated. The small and disadvantaged utilization specialist is now known as the small business specialist.

Replacement pages: TOC, 1219-1 thru 1219-4

Item XV--Labor Surplus Area Concerns

Chapter 1220 was deleted in its entirety and reserved because FAC 90-32 of the FAR deleted and reserved Federal Acquisition Regulation Part 20, Labor Surplus Area Concerns. The present Coast Guard coverage is unnecessary since the delegation under TAR 1220.9000 is to Coast Guard's COCOs.

Replacement pages: RESERVED

Item XVI--Change to correct title for TAM 1222.1021 from "Substantial variance hearings" to "Request for hearing"

Chapter 1222.1021 is deleted and substituted.

Replacement page: TOC, 1222-7 & 1222-8

Item XVII--Change to revise the DOT Affirmative Procurement Program (APP) for Recovered Materials

Chapter 1223, TOC, subchapter 1223.4, inclusive of Appendices A through J have been revised to coincide with revised

FAR coverage on the use of recovered materials and contracting for environmentally preferable products and services. The DOT APP (TAM 1223.4) has been updated to include all of the current EPA designated items, plus the special preference for the acquisition of recycled toner cartridges.

Replacement pages: TOC, 1223-3 thru 1223-37

Item XVIII--Change to correct section number for TAM 1228.311-2 to read TAM 1228.311-1 on the Table of Contents page and TAM page 1228-2. The title of the section remains unchanged.

Section 1228.311-2 is renumbered to align with corresponding FAR numbering.

Replacement pages: 1228-1 & 1228-2

Item XIX--Changes to add new coverage for Contract Financing

Change to add new TAM Subchapter 1232.006, Reduction or suspension of contract payments upon finding of fraud, and add new TAM section 1232.006-3, Responsibilities, and new paragraph (a); change TAM Subchapter 1232.006 to add new TAM section 1232.006-4, Procedures, and add new paragraph (a); change the title of TAM Subchapter 1232.1 to read **NON-COMMERCIAL ITEM PURCHASE FINANCING**; change TAM Chapter 1232, Contract Financing, to add new TAM subchapter 1232.2, Commercial item purchase financing; change to add new TAM section 1232.206, Solicitation provisions and contract clauses, and new paragraphs (a), (b)(2), (g), and (g)(2); change TAM 1232.8, Assignment of claims, to add new TAM section 1232.803, Policies, and new paragraph (d); change TAM 1232.7, Contract Funding, to add new TAM section 1232.703-3, Contracts crossing fiscal years, and new paragraph (b).

Replacement pages: TOC, 1232-1 thru 1232-17

Item XX--Changes to add new coverage, clarify that the authority of the HCA cannot be further delegated, and correct title

Change TAM 1233.1, Protests, to change TAM 1233.104, Protests to GAO, to change and clarify the first sentence of paragraph (g).

Replacement page: TOC, 1233-1 & 1233-2

Item XXI--Change to add distribution instructions

TAM 1236.201(a)(1) and 1236.604 have been added to permit OA development of procedures for distribution of performance reports.

Replacement pages: 1236-1 & 1236-2, 1236-5 & 1236-6

Item XXII--Changes to add new coverage and editorial corrections and changes for Service Contracting

Change Subchapter 1237.1, Service Contracts--General, to add new TAM sections 1237-106, Funding and term of service contracts, and new paragraph (b). Change the citations for TAM 1237.202, 1237.202-70, and 1237.202-71 to read TAM 1237.203, 1237.203-70, and 1237.203-71, respectively; change TAM 1237.2, Advisory and Assistance Services, to delete TAM 1237.205, 1237.205-70, and 1237.206; and change the citations for TAM 1237.207 and 1237.207-70 to read TAM 1237.205 and 1237.205-70, respectively.

Replacement pages: TOC, 1237-1 thru 1237-8

Item XXIII--Changes to replace RESERVED page with new coverage on Acquisition of Utility Services.

TAM 1241.501 is added to implement FAR FAC 90-23 to allow flexibility in the use of clauses and provisions for utility contracts.

Replacement pages: TOC, 1241-1

Item XXIV--Change to add new coverage to Contract Administration

TAM 1242.15 adds coverage on contractor performance information to implement FAR FAC 90-32.

Replacement pages: TOC, 1242-1 thru 1242-18

Item XXV--Change to add new coverage to Quality Assurance

TAM 1246.316 added contractor inspection requirements, and TAM 1246.401 was added to make reference to TAM 1246.601 to prescribe use of the inspection and receiving report. TAM 1246.704 and TAM 1246.708 added other requirements pertaining to inspection requirements.

Replacement pages: TOC, 1246-1 & 1246-2

96-03 TAM FILING INSTRUCTIONS

Remove Pages

Structure of the TAM
(pages 1 thru 7)

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TOC, 1209-1 thru 1209-5

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1211, RESERVED

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1213-83 & 1213-84

TOC, 1215-3 thru 1215-10

TOC, 1216-1 & 1216-2

TOC, 1217-1 thru 1217-4

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TOC, 1230-1

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(pages 1 thru 8)

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1210, RESERVED

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1212, RESERVED

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1241, RESERVED

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TOC, 1246-1 & 1246-2

Insert Pages

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1236-1 & 1236-2

1236-5 & 1236-6

TOC, 1237-1 thru 1237-8

TOC, 1238-1

TOC, 1241-1

TOC, 1242-3 thru 1242-18

TOC, 1246-1 & 1246-2

Original signed by
David J. Litman
Senior Procurement Executive

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CHAPTER 1201

FEDERAL ACQUISITION REGULATIONS SYSTEM

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CHAPTER 1201

FEDERAL ACQUISITION REGULATIONS SYSTEM

SUBCHAPTER 1201.1--PURPOSE, AUTHORITY, ISSUANCE

1201.101 Purpose.

The Department of Transportation Acquisition Manual (TAM) is issued by the Senior Procurement Executive (SPE), Office of Acquisition and Grant Management (M-60). It establishes for the Department of Transportation (DOT) uniform internal operating acquisition procedures which implement or supplement the Federal Acquisition Regulation (FAR) and the Transportation Acquisition Regulation (TAR).

I 1201.103 Authority.

The TAM is issued pursuant to DOT Order 4200.18 series, Establishment of a Transportation Acquisition Manual.

I 1201.104 Applicability.

All acquisitions within the Department are to follow this manual unless otherwise excluded by the FAR, TAR, or this manual.

I 1201.105 Issuance.

I 1201.105-170 Publication of TAM

This manual is issued in loose-leaf form and in floppy disk format.

I 1201.105-270 Arrangement of TAM

(b) *Numbering.*

(1) This manual conforms with the arrangement and numbering system prescribed by (FAR) 48 CFR 1.104. The numbering illustrations at (FAR) 48 CFR 1.104-2(b) are equally applicable to this manual.

(2) TAM coverage is identified by the prefix "12" and followed by the complete TAM cite which may be down to the subparagraph level (e.g., TAM 1201.104-3).

(3) Coverage in the TAM that supplements the FAR will use chapter, subchapter, section and subsection numbers ending in "70" through "89" (e.g., TAM 1201.301-70).

(4) Coverage in the TAM other than that identified with a "70" or higher number, that implements the FAR or TAR will use the identical number sequence and caption of the FAR or TAR segment being implemented which may be down to the subparagraph level (e.g., TAM 1201.602-3(a)).

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(c) *References and citations.* This manual may be referred to as the Transportation Acquisition Manual or the TAM. Cross reference to the FAR, TAR, or TAM in this manual will be cited by "FAR", "TAR", or "TAM" followed by its numbered cite.

I 1201.105-3 Copies.

(a) Loose-leaf copies of the TAR and TAM are distributed to DOT offices through the Utilization and Storage Section, M-443.2, 400 7th Street, S.W., Washington, DC, 20590; floppy disk copies of the TAR and TAM are distributed to DOT offices through the Acquisition Policy Division, M-61, 400 7th Street, S.W., Washington, DC, 20590. The TAR and TAM are available from the Government Printing Office.

(b) Requests for copies of the TAR and TAM for Departmental use must include the title of the document; quantity requested; the name, agency, routing symbol, and room number of the requestor; a 3-1/2" or 5-1/2" floppy disk (if requested in that format); and a completed mailing label for those requests outside the Nassif Building.

(c) The TAR and TAM distribution list is maintained by M-60. OA requests for additions, deletions, or changes (including quantity changes) to this list shall be in writing and forwarded to M-60, 400 7th Street, S.W., Washington, DC, 20590. Field offices are to coordinate any changes through their appropriate Headquarters office.

I 1201.106 OMB Approval Under the Paperwork Reduction Act. Prior to obligating funds and entering into a contractual agreement for information collection activities, the contracting officer shall obtain a clearance and approval from OMB. The SF-83, Request for OMB Review, shall be used to request OMB's review and approval. Operating administration (OAs) Paperwork Clearance Officers are available to assist in preparing the information collection justification for the SF-83.

(a) *Data collection under proposed contracts.* SF-83s must be forwarded to the Office of Information Resource Management, Information Requirements Division (M-34), for processing to OMB. Early coordination with Paperwork Clearance Officers and M-34 prior to release of the solicitation should prevent delays caused by the requirement to obtain OMB approval.

(b) *Data collection under TAR Supplements.* An SF-83, along with the calculations used to derive the numbers shown on the SF-83, shall be forwarded to the SPE along with the proposed TAR Supplement coverage (see TAM 1201.304) for coordination with M-34.

SUBCHAPTER 1201.2- ADMINISTRATION

1201.201 Maintenance of the FAR

1201.201-70 Submission of suggested changes.

(a) Suggested changes to the FAR, TAR, and this manual shall be transmitted to the SPE after review and approval of the manager of the office requesting the

(3) Considering all comments received in response to proposed TAR and TAM revisions.

1201.304 Agency control and compliance procedures.

(a) *OA acquisition regulations.* OA acquisition regulations shall:

- (1) Be incorporated into the TAR as a supplemental regulation;
- (2) Be coordinated in accordance with OA internal procedures (including review by legal counsel) to ensure compliance with (FAR) 48 CFR 1.301 and DOT's rulemaking process before submission to the SPE;
- (3) Be submitted to the SPE for review and approval by a transmittal letter signed by no lower than an Associate Administrator/Flag Officer or equivalent level at the initial stages of the regulatory process (i.e., before proceeding to the public comment process); include a Paperwork Reduction Act (see TAM 1201.201-70) and Regulatory Flexibility Act analysis, as appropriate; and be supported by a justification of need for the regulation;
- (4) Be disseminated by M-60 to TAR distribution addressees and by the OA to other than TAR distribution addressees; and
- (5) Pertain only to that OA.

(b) *OA acquisition procedures.* OA acquisition procedures shall:

- (1) Contain no material which duplicates unless necessary for clarity (this is expected to be minimally required), paraphrases, or is inconsistent with the contents of the FAR, TAR, and this manual;
- (2) Be consistent with the policies and procedures of the FAR, TAR, this manual, and other Departmental guidance and follow the format, arrangement, and numbering system specified in TAM 1201.104-270 and TAM 1201.301-70 to the extent practicable; and
- (3) Be reviewed, as deemed appropriate, in accordance with internal operating procedures and the following:
 - (i) OAs shall advise M-60 in writing (by topic) of their intent to promulgate acquisition guidance implementing or supplementing the FAR, TAR, or this manual (see 49 CFR 1.59(q)(1)). OAs will be advised of any procedures which are to be provided to M-60 for review.
 - (ii) The HCA is responsible for ensuring that OA contracting offices limit their promulgation of acquisition procedures and, if procedures are necessary, to ensure they comply with subparagraphs (1) and (2) above.

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SUBCHAPTER 1201.470--DEVIATIONS FROM THE FAR, TAR, AND TAM

1201.403 Individual deviations.

(a) Requests for individual deviations from the FAR, TAR, and this manual can be granted. The authority to approve individual deviations to this manual has been delegated to the HCA or designee no lower than the Senior Executive Service (SES)/Flag Officer level, except when this authority has been otherwise assigned by regulation (see (FAR) 48 CFR 1.405 for deviations for Treaties), statute (e.g., most Cost Accounting Standard (CAS) deviations must be granted by the CAS Board), or this manual. All deviation requests shall:

- (1) Be coordinated with legal counsel;
- (2) Cite the specific part of the FAR, TAR, or this manual from which a deviation is required;
- (3) Set forth the nature of the deviation(s); and
- (4) State the reasons for the action requested.

(b) A copy of approved individual deviations shall be provided to M-60 within 5 working days of approval so that M-60 can:

- (1) Provide a copy of FAR deviations to the FAR Secretariat in accordance with (FAR) 48 CFR 1.403; and
- (2) Determine if a TAR or TAM change should be considered.

1201.404 Class deviations.

(a) The authority of the agency head under (FAR) 48 CFR 1.404(a) is delegated to the SPE unless (FAR) 48 CFR 1.405(e) is applicable. Requests for class deviations to the FAR, TAR, and this manual shall be endorsed by the HCA or designee no lower than the SES/Flag Officer level, before submitting the request to the SPE for approval. Requests submitted shall include the same type of information and follow the same procedures in TAM 1201.403(a)(1)-(4).

SUBCHAPTER 1201.6--CAREER DEVELOPMENT, CONTRACTING AUTHORITY AND RESPONSIBILITIES

1201.601 General.

The authority of the agency head under (FAR) 48 CFR 1.601 is delegated to the HOAs. The Secretary, HOAs and HCAs (see TAM 1202.170 for a listing of DOT HCAs) shall be considered contracting officers within DOT by virtue of their positions; no Certificate of Appointment (see TAM 1201.603-3) is required. All other DOT contracting officers shall be selected and appointed under TAM 1201.603.

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1201.602 Contracting officers.

1201.602-2 Responsibilities.

Contracting officers may only delegate their responsibilities to an authorized representative(s) (e.g., Bankcard recipient, contracting officers' technical representative). Any delegation of responsibility must be in writing to specified individuals (by name, not position) and clearly enumerate the delegated responsibilities and any limitations attached thereto.

1201.602-3 Ratification of unauthorized commitments.

(a) Definitions.

(1) "Ratifying official" means the individual having the authority to authorize the issuance of a contract award, purchase order, or other procurement instrument providing for the ratification of an unauthorized commitment.

(2) "Unauthorized commitment", as defined in (FAR) 48 CFR 1.602-3, includes, but is not limited to, any action by a person other than the contracting officer that results in: (i) continued performance by a contractor beyond the expiration date or the price established by the procurement instrument; or (ii) the commencement of performance of work in advance of issuance of a formal procurement instrument properly executed by a duly authorized contracting officer.

(b) Policy.

(2) The authority of the HCA under (FAR) 48 CFR 1.602-3(b)(2) remains with the HCA unless redelegated to an organizational level no lower than the COCO in accordance with (FAR) 48 CFR 1.602-3(b)(3).

(c) Limitations.

(7) The following procedures shall be used for ratification of an unauthorized commitment:

(i) It is the responsibility of the individual who made the unauthorized commitment to provide the following information to the ratifying official:

(A) A discussion describing the circumstances causing the unauthorized commitment;

(B) Reasons why normal procurement procedures were not followed;

(C) What bona fide Government requirement necessitated the commitment;

(D) Whether any benefit was received;

(E) The dollar value of the commitment and an evaluation of the contractor's effort in terms of appropriateness of the hours expended, type of labor used, and other costs expended;

(F) Rationale for the contractor selected and identification of other sources considered;

(G) Status of performance;

(H) Any other pertinent facts including invoices, receiving report, or other documentary evidence of the transaction;

(I) The signature, following the above information, of the employee who created the unauthorized commitment certifying to the accuracy of the information provided;

(J) Recommendations, signed by the employee's Division Director (or equivalent), for corrective action to preclude the situation from recurring; and

(K) A complete procurement request (i.e., Form DOT F 4200.1, Procurement Request), including a certification that the funds included in the purchase request for the ratifying action were available at the time the unauthorized commitment occurred.

(ii) If the individual who made the unauthorized commitment is not available, the office responsible for the commitment shall provide the information described in subparagraph (i) above with the name (vice signature) of the individual who made the unauthorized commitment.

(iii) A written contract, as defined under (FAR) 48 CFR 2.101, is not required to confirm the ratification of an unauthorized commitment. The contracting officer, on a case-by-case basis, shall decide if a contract or other written means would be appropriate for a particular situation. Such factors as the furnishing of Government property, promise of product delivery, dispute over invoiced prices, etc., are to be considered when determining if a contract will or will not be used.

(A) The complete file containing all the ratification documentation requirements of subparagraph (c)(7)(i) (also see (B) below), shall be provided to the ratifying official for a determination to ratify or not to ratify the action.

(B) Before ratification of an action, a letter requesting payment or an invoice from the contractor who provided the supply or service must be received. If not already received, the contracting officer must obtain an invoice after ratification for submission to the finance office.

(C) A memorandum signed by the contracting officer which approves the invoice shall be sent to the finance office along with the invoice. The original certified Form DOT F 4200.1, Procurement Request, (covering the total amount of the invoice), a copy of the ratifying official's ratification, and the document confirming the ratification (see subparagraph (iii) above), shall be attached to the memorandum

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CHAPTER 1202

DEFINITIONS OF WORDS AND TERMS

SUBCHAPTER 1202.1 - DEFINITIONS

1202.1 Definitions.

(a) "*Administration Acquisition Executive (AAE)*" is the Head of the Operating Administration (HOA) or designee, no lower than two levels below the HOA but, in no case, lower than the Associate Administrator level or Chief of Staff for the Coast Guard.

(b) "*Contracting officer*" means, in addition to the definition in (TAR) 48 CFR 1202.1, the individual authorized by virtue of his/her position (see TAM 1201.601) or by appointment (see TAM 1201.603-3) to perform the functions assigned by this manual.

1202.170 Listing of HCAs and COCOs.

(a) *HCAs*. The individuals designated as HCAs shall be designated by the cognizant HOA. The HOA shall notify the SPE within 10 working days of any changes shown to the following listing:

- (1) FAA: Associate Administrator for Contracting and Quality Assurance;
- (2) FHWA: Executive Director;
- (3) FRA: Associate Administrator for Administration;
- (4) FTA: Administrator;
- (5) MARAD: Associate Administrator for Administration;
- (6) NHTSA: Associate Administrator for Administration;
- (7) RSPA: Associate Administrator for Management and Administration;
- (8) SLSDC: Associate Administrator;
- (9) TASC: Director, Transportation Administrative Service Center; and
- (10) USCG: Director of Finance and Procurement.

(b) The individuals designated as COCOs shall be appointed by the cognizant HCA. The HCA shall provide a listing of all designated COCOs within the OA to the SPE. Any revisions to this listing shall be provided to the SPE within 10 working days of COCO designation.

1202.270 Listing of acronyms and office symbols used in TAM

Appendix A contains a listing of commonly used acronyms and office symbols used in this manual.

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OPM	Office of Personnel Management
OSDBU	Office of Small and Disadvantaged Business Utilization
OST	Office of the Secretary of Transportation
P. L.	Public Law
PM	Prenegotiation Memorandum
PMR	Procurement Management Review
PNM	Price Negotiation Memorandum
PR	Procurement Request
R&D	Research and Development
RCRA	Resource Conservation and Recovery Act
REQ	Requirements
RFQ	Request for Quotations
RFP	Request for Proposals
RLO	Records Liaison Officer
RMBCS	Rocky Mountain Bankcard System
RMD	Records Management Officer
RSPA	Research and Special Programs Administration
SBA	Small Business Administration
SCA	Senior Competition Advocate
SADBUS	Small and Disadvantaged Business Utilization Specialist
SEB	Source Evaluation Board
SES	Senior Executive Service
SF	Standard Form
SIC	Standard Industrial Classification
SLSDC	Saint Lawrence Seaway Development Corporation
SOW	Statement of Work
SPA	Special Priorities Assistance
SPE	Senior Procurement Executive
SSO	Source Selection Official
T&M	Time and Materials
TAC	Transportation Acquisition Circular
TAM	Transportation Acquisition Manual
TAM NOTE	TAM Notice
TAR	Transportation Acquisition Regulation
TARC	TAR Council
TASC	Transportation Administrative Service Center
TB	TAM Bulletin
TIN	Tax Identification Number
TN	TAR Notice
UNICOR	Federal Prison Industries
USC	United States Code
USCG	United States Coast Guard
VE	Value Engineering
VECP	Value Engineering Change Proposal
VNTSC	Volpe National Transportation Systems Center

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Office Symbols

A-1	Assistant Secretary for Public Affairs
A-30	Office of Public Information
B-1	Assistant Secretary for Budget and Programs
B-30	Office of Financial Management (formerly M-80)
C-1	General Counsel
C-10	Assistant General Counsel for Environmental, Civil Rights, and General Law
C-15	Patent Counsel
C-50	Assistant General Counsel for Regulation and Enforcement
I-1	Assistant Secretary for Governmental Affairs
J-1	Inspector General
JI-1	Assistant Inspector General for Investigations
M-1	Assistant Secretary for Administration
M-30	Office of Information Resource Management
M-34	Information Requirements Division
M-35	Transportation Computer Center
M-40	Office of Administrative Services and Property Management
M-44	Personal Property Division
M-442	Personal Property Policy Staff
M-443	Personal Property Operations Branch
M-443.2	Utilization and Storage Section
M-47	Real Property Division
M-48	Publications Services Division
M-49	Library Services Division
M-60	Office of Acquisition and Grant Management
M-61	Acquisition Management Division
M-62	Grants Management Division
M-70	Office of Security
S-1	Secretary of Transportation
S-2	Deputy Secretary of Transportation
S-20	Board of Contract Appeals
S-40	Office of Small and Disadvantaged Business Utilization

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SUBCHAPTER 1203. 7--VOIDING AND RESCINDING CONTRACTS

1203. 703 Authority.

The authority of the head of the agency under (FAR) 48 CFR 3.703 is delegated to the HCA, with written notification provided to the HOA, prior to voiding or rescinding a contract or other transaction as enumerated in 18 U.S.C. 218.

1203. 704 Policy.

(a) The authority of the agency head under (FAR) 48 CFR 3.704 is delegated to the HCA, with written notification to be provided to the HOA, prior to voiding or rescinding a contract or other transaction as enumerated in 18 U.S.C. 218.

1203. 705 Procedures.

The authority of the agency head under (FAR) 48 CFR 3.705(a) through (e) is delegated to the HCA, with written notification to be provided to the HOA, prior to providing notification to the Department of Justice.

(c) *Decision-Making Process.* Prior to taking the actions under (FAR) 48 CFR 3.705 concerning voiding or rescinding a contract, the contracting officer shall ensure that the file fully supports the proposed action. The opinion of legal counsel also shall be sought to ensure that all requirements of (FAR) 48 CFR 3.705 have been met.

I

APPENDIX A

LIST OF PROCUREMENT OFFICIALS FOR PR # _____

(A) TO BE COMPLETED BY THE HEAD OF THE REQUIRING OFFICE AND SUBMITTED WITH PRs FOR AWARDS ESTIMATED TO EXCEED \$100,000

The persons identified below as procurement officials have executed a Procurement Integrity Certification (OF 333) which is on file.

Procurement Officials

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Head of Requiring Office

Signature/Date

Office

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CHAPTER 1204

ADMINISTRATIVE MATTERS

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SUBCHAPTER 1204. 9- -INFORMATION REPORTING TO THE INTERNAL REVENUE SERVICE

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procurement instrument in such a location as to separate it from the PIIN. The contracting officer shall assign a PIIN to each type of instrument described under TAM 1204.602-7202(a)(5). The number shall be retained for the life of the instrument to which it is assigned.

1204.602-7202 The Basic Procurement Instrument Identification Number.

(a) Elements of the PIIN. The PIIN shall consist primarily of 14 alphanumeric characters which may be expanded to 15 as permitted under TAM 1204.602-7202(a)(6). The characters shall be positioned as follows:

(1) Positions one and two. A two-digit alphabetic code which identifies the procuring agency. This code must always be "DT" which means the Department of Transportation.

(2) Positions three and four. A two-digit alphabetic code which identifies the DOT operating administration. The following codes shall be used:

CG - Coast Guard
FA - Federal Aviation Administration
FH - Federal Highway Administration
FR - Federal Railroad Administration
FT - Federal Transit Administration
MA - Maritime Administration
NH - National Highway Traffic Safety Administration
OS - Transportation Administrative Service Center (including the Office of the Secretary)
RS - Research and Special Programs Administration
SL - Saint Lawrence Seaway Development Corporation

(3) Positions five and six. A two-digit alphanumeric code which identifies the procurement office of the operating administration that issued the procurement instrument.

(4) Positions seven and eight. A two-digit numeric code which is the last two digits of the fiscal year in which the PIIN is assigned to the procurement instrument.

(5) Position nine. A one-digit alphabetic code which identifies the type of procurement instrument (i.e., agreement, sealed bidding, contracts, etc.). The following codes shall be used:

A - Agreement: Use for a basic agreement, basic ordering agreement, or blanket purchase agreement as defined under (FAR) 48 CFR 13.2 and 16.7. Do NOT use for Cooperative Agreements.

B - Sealed Bidding: Use for invitation for bids as defined under FAR 14.2.

C - Contracts: Use for all contracts (i.e., letter, 8(a), etc.). Also, includes contracts for appraisals, surveys, title, closing, and other work related to leasing or acquiring real estate rights. Do NOT use this code for Indefinite-Delivery contracts.

D - Indefinite-Delivery Contracts: Use for Indefinite Quantity, Definite Quantity, and Requirements contracts as defined under (FAR) 48 CFR 16.5 (see TAM 1204.602-7203(a)(3) for numbering of individual orders under indefinite-delivery contracts).

F - Delivery Orders: Use when placing orders directly against (1) a contract administered by another Government agency or department e.g. General Services Administration, the Department of Veterans Affairs, and the Office of Personnel Management, and (2) contracts administered by agencies other than DOT including the National Industries for the Blind, National Industries for the Severely Handicapped, and the Federal Prison Industries (UNICOR).

G - Grants: Reserved for grants when a PIIN formatted number is assigned.

H - Cooperative Agreements: Reserved for cooperative agreements when a PIIN formatted number is assigned.

K - Land Purchases and Condemnations: Use for acquisition of permanent real estate interests (fee simple or easement) by purchase or condemnation. Does not include leasehold interests (land or space) in real property.

L - Lease Agreement: Use for leasing real property and supplies or equipment. Also, includes instruments for both land and space where the Government obtains real estate rights and aerial easements for a limited period of time, and may or may not be monetary in consideration. Does NOT include Interagency Agreements.

P - Purchase Orders: Use for purchase orders described under FAR Subpart 13 (assign **V**, then **W** when numbering capacity of **P** becomes exhausted during a fiscal year). Also, includes orders for appraisals, surveys, title, closing, and other work related to leasing or acquiring real estate rights.

Q - Request for Quotation: Use when the procedures under (FAR) 48 CFR Part 13.1 or (FAR) 48 CFR Part 15.4 are followed.

R - Request for Proposal: Use when the procedures under (FAR) 48 CFR Part 15.4 are followed.

S - Sales Contract: Use for sales and other disposal of real and personal property.

U - Utilities: Use for contracts for electric, telephone, water, natural gas, and other utilities.

X - Interagency Agreements: Use when placing an order with any other agency for supplies or services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract. (FAR) 48 CFR 17.502 applies.

The letters **E, J, M, N, T, Y and Z** are reserved for the internal use of the operating administration. These letters may **NOT** be used to identify a DOT procurement instrument in lieu of the above designated codes assigned to the type of instrument.

CHAPTER 1205

PUBLICIZING CONTRACT ACTIONS

SUBCHAPTER 1205.2--SYNOPSIS OF PROPOSED CONTRACT ACTIONS

1205.201 General.

(c) As a means of locating additional small business concerns (see (FAR) 48 CFR 19.202-2(b)) and disseminating notices of proposed acquisitions to minority, women-owned, and disadvantaged businesses through the DOT National Information Clearinghouse (NIC), contracting officers are required to forward a copy of the notice of proposed contract action (synopsis) to the DOT Office of Small and Disadvantaged Business Utilization (OSDBU), S-40, 400 Seventh Street, S.W., Washington, DC, 20590-0002, Attention: NIC.

(1) The copy is to be annotated with the four digit Standard Industrial Classification (SIC) code whose definition, as found in the OMB SIC Manual, best describes the principal nature of the product or service being synopsisized. The annotation may be in the form of a pen and ink notation on the face of the synopsis. The NIC uses the SIC code to match DOT procurements with firms in the NIC database.

(2) The copy of the synopsis is to be forwarded to OSDBU at the same time the notice is sent to the Commerce Business Daily (CBD). One of the three methods described below, listed in order of preference, shall be used to transmit the synopsis announcement to OSDBU at the same time the notice is sent to the CBD:

(i) Floppy Disk (use ASCII format; Wordperfect - DOS format) sent to the OSDBU address shown above;

(ii) Facsimile (FTS (202) 366-7538); or

(iii) Hard copy sent to the OSDBU address shown above.

1205.202 Exceptions.

(b) The authority of the agency head under (FAR) 48 CFR 5.202(b) is delegated to the HCA.

1205.203 Publicizing and response time.

The Department of Commerce (DOC) has established the Commerce Business Daily Publication Data Service. This is an electronic bulletin board service that provides contracting officers with the publication dates of their synopses. The service is available 24 hours a day, seven days a week. If you require any assistance in using the service, call the Office of Procurement Management, DOC, at (202) 377-4248 or the Office of Publications, DOC, at (202) 377-0632. An outline of the service is attached as Appendix A to this chapter.

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1205.207 Preparation and transmittal of synopses.

(b)(1) *General.* DOC has advised that all incorrectly formatted CBD notices will be returned unpublished to the originating contracting office.

(b)(4) *Standard format.* When preparing synopses, the following guidance is applicable:

FORMAT ITEM AND EXPLANATION DESCRIPTION OF ENTRY

4. FEDERAL INFORMATION PROCESSING STANDARD (FIPS) NUMBER. The FIPS numbers for the OAs are as follows:

I	6901 - TASC (including OST)
	6920 - FAA
	6925 - FHWA
	6930 - FRA
	6938 - MARAD
	6940 - NHTSA
	6943 - RSPA
	6947 - SLSDC
	6950 - USCG
	6955 - FTA

6. CLASSIFICATION CODE. The CBD staff is not authorized to determine the classification code for any CBD notice. Because a misclassified contract action fails to notify the firms most likely to respond and therefore may violate the Competition in Contracting Act, the contracting officer is held responsible for correctly classifying a CBD notice. A misclassified contract action shall be corrected and re-synopsized in the CBD. Detailed CBD classification codes appear in each Monday edition of the CBD in the Section entitled "Reader's Guide."

17. DESCRIPTION. To promote the financial assistance programs available from the OSDBU (S-40), procurement offices shall add the following information in each synopsis of an acquisition containing a bonding requirement as an addition to Item #17:

"This Notice is for informational purposes for Minority, Women-Owned and Disadvantaged Business Enterprises: The Department of Transportation (DOT), Office of Small and Disadvantaged Business Utilization (OSDBU), has programs to assist minority, women-owned and disadvantaged business enterprises to acquire short-term working capital and bonding assistance for transportation-related contracts. This is applicable to any eligible prime or subcontract at any tier. The DOT Bonding Assistance Program enables firms to apply for bid, payment, and performance bonds up to \$1.0 million per contract. The DOT provides an 80 percent guaranty on the bond amount to a surety against losses. Loans are also available under the DOT Short Term Lending Program (STLP) at prime interest rates to provide accounts receivable financing. The maximum line of credit is \$500,000. For further information regarding the bonding and lending programs, please call the DOT Office of Small and Disadvantaged Business

Utilization at (800) 532-1169. For information concerning the acquisition, contact the contracting official listed above."

When synopsising all other acquisitions that do not require bonding, add the following information to Item #17:

"This Notice is for informational purposes for Minority, Women-Owned and Disadvantaged Business Enterprises: The Department of Transportation (DOT), Office of Small and Disadvantaged Business Utilization (OSDBU), has a program to assist minority, women-owned and disadvantaged business enterprises to acquire short-term working capital assistance for transportation-related contracts. Loans are available under the DOT Short Term Lending Program (STLP) at prime interest rates to provide accounts receivable financing. The maximum line of credit is \$500,000. For further information and applicable forms concerning the STLP, call the OSDBU at (800) 532-1169. For information concerning the acquisition, contact the contracting official listed above."

SUBCHAPTER 1205.3--SYNOPSIS OF CONTRACT AWARDS

1205.301 General.

If it is determined that synopsis of award is unnecessary, the rationale shall be documented in writing and included in the contract file.

1205.301-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

The synopsis of contract award, where applicable, shall include a statement identifying the contract as one containing Pub. L. 95-507 ((FAR) 48 CFR 19.702) subcontracting plans and goals.

1205.303 Announcement of contract awards.

(a) *Public announcement.* Contracts valued at \$1.5 million or more shall not be distributed nor any information released to any source outside of DOT (except in the case of notification to unsuccessful offeror(s) under a small business set-aside ((FAR) 48 CFR 15.1000(b)(2)) that the contract has been approved until the Assistant Secretary for Government Affairs (I-1) or designee has advised the contracting officer (or other official designated in accordance with OA procedures) that the contract may be released. The contracting officer may sign the contract, but no information may be released outside of DOT until the procedures contained in the subparagraphs below have been accomplished.

(1) The contract notification procedures contained in this subchapter (supplemented as necessary by OA procedures) and Form DOT F 4220.41, Contract Award Notification (see 1253.205-70), shall be used to transmit the required contract award information to I-1. The information contained on Form DOT F 4220.41 will be used by I-1 when preparing press releases and otherwise announcing contracts.

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(2) Form DOT F 4220.41 shall be prepared, signed, and submitted to I-1 by the contracting officer or other official designated by the OA by hand-carry (Room 10408 of the Nassif Building) or facsimile transmission ((202) 366-3675) for procurement actions.

(3) For those procurements subject to the requirements of Subchapter 1215.6, Formal Source Selection, after the Source Selection Official has selected the contractor(s) for award, the contracting officer shall be notified immediately so that the Form DOT F 4220.41 can be prepared, signed, and transmitted to I-1. All personnel are reminded that contract information contained on Form DOT F 4220.41 may be competition sensitive. Information concerning the award shall not be disclosed to parties outside of DOT except by I-1 and the contracting officer.

(4) Unless I-1 requests the contracting officer or other designated official not to proceed with contract award, awards may be announced on the third working day following receipt of the Form DOT F 4220.41 in I-1. The contracting officer is responsible for documenting the date the DOT F 4220.41 is received by I-1 by verifying receipt at (202) 366-9714.

SUBCHAPTER 1205.4 - RELEASE OF INFORMATION

1205.401 General.

After consultation with OA legal counsel and/or personnel from the Freedom of Information Act (FOIA) office (as applicable), the contract file shall be documented to provide the rationale for withholding information other than that permitted to be withheld in (FAR) 48 CFR 5.401(b). A copy of the response from the FOIA office denying the request may be included in the file as the documentation.

1205.403 Requests from Members of Congress.

(a) *Individual requests.* The authority of the agency head under (FAR) 48 CFR 5.403(a) is delegated to the HCA.

1205.404 Release of long-range acquisition estimates.

1205.404-1 Release procedures.

(b) (1) Contracting officers shall comply with the security requirements set forth under TAM 1204.4 concerning the release of classified information.

SUBCHAPTER 1205.5 - PAID ADVERTISEMENTS

1205.502 Authority.

(a) *Newspapers.* The authority of the head of the agency under (FAR) 48 CFR 5.502(a) is delegated one level above the contracting officer.

(2) coordinate with all personnel responsible for significant aspects of the plan (e.g., contracting, fiscal, legal, technical, and logistics);

(3) provide input to the plan as necessary;

(4) obtain applicable concurrences;

(5) forward the plan through the approval process; and

(6) review and update the plan.

(b) *Technical official.* The technical official is responsible for providing applicable input for the plan (e.g., quality, quantity, delivery requirements).

(c) *Contracting Officer.* The contracting officer is responsible for providing applicable input for the plan (e.g., type of contract to be used, procurement milestones, set-aside considerations).

(d) *Competition Advocate.* The cognizant competition advocate within the OA is responsible for reviewing streamlined acquisition plans before they are submitted to the approving official when other than full and open competitive procedures are expected to be used.

1207.105 Contents of written acquisition plans.

1207.105-70 Minimum contents of streamlined acquisition plans.

Although OAs may add additional requirements at their discretion, the following information, as a minimum, shall be addressed in streamlined acquisition plans:

(a) *Requirement.* Briefly describe the capability needed (in functional terms) within an OA's overall mission. Assess as to why existing capabilities are not sufficient and list any known constraints (including budget, legal, personnel, logistics and maintenance considerations, etc.). In addition, include the potential opportunities for technological enhancement, obsolescence of equipments, and cost savings.

(b) *Description of Acquisition.* Identify how the requirement is to be satisfied and the technical and contractual history of the proposed acquisition.

(c) *Resources Required.*

(1) List, by fiscal year, the total minimum and maximum resources in terms of dollars, new positions, etc., needed for the acquisition. Relate resources to budget requests (i.e., how will the budgeting be accomplished for the resources needed?). Indicate if other Governmental agencies or DOT OAs are affected.

(2) Describe the methodology used in formulating the Government's best estimate of the total cost. Items that are considered to have sufficient cost impact to warrant special consideration are to be separately identified. Any

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plans for developing Independent Cost Analysis, Make or Buy programs, Design-to-Cost, Most Probable Cost, and Life-Cycle Cost estimates should be presented.

(d) *Extent of Competition.* Describe how competition will be obtained during the acquisition while considering opportunities for small business, small disadvantaged business, and labor surplus area concerns. Include in the discussion any opportunities for competition resulting from component or subsystem breakout, spare and repair parts, or subcontracting efforts. If other than full and open competitive procedures are anticipated to be used address:

(1) the basis for the use of the applicable authority of (FAR) 48 CFR 6.302;

(2) why full and open competition cannot be obtained; and

(3) identification of the expected source(s).

(e) *Acquisition Strategy.* Provide a summary of the acquisition strategy by addressing: type of contract proposed (including any incentives contemplated); milestones for the acquisition cycle (expressed in terms of calendar date of the action); period of performance (including option year(s)); set-aside considerations; special contract requirements; non-standard provisions and clauses; streamlining techniques to be used; and any other contracting considerations.

(f) *Description of Risks.* Briefly describe those areas of the acquisition which are believed to represent significant technical, schedule, or cost risks.

1207.105-71 Minimum contents of APPs.

As a minimum, the completion of DOT F 4220.12, Annual Procurement Plan (APP), found at TAM 1253.303-4220.12, and its accompanying instructions (located on the back of the form), fulfills the information requirements for an APP and any update to it. Optional, OAs can use guidance provided by S-40.

1207.105-72 Eliminating redundancies.

(a) For those acquisitions where the OA requires a separate Mission Need Statement (MNS) beyond that required by TAM 1207.105-70(a), the OA's MNS may be attached to the plan in lieu of repeating the MNS information in the plan.

(b) For FIP acquisitions where the Federal Information Resources Management Regulation (FIRMR) requires the same planning information as that contained within TAM 1207.105-70, the information may be attached to the plan in lieu of repeating the information in the plan.

1207.107-70 Update, approval, and distribution procedures for streamlined acquisition plans.

(a) *Updates.* Plans are to be reviewed by the acquisition planner at least once every 12 months.

(1) Plans are to be updated when a significant change from the approved plan is contemplated (e.g., a new requirement, change in existing requirements, and change in acquisition strategy including contract type, cost growth, etc.);

(2) If, during a 12 month period, no significant change as discussed in subparagraph (1) above has occurred, the plan shall be reviewed and the approving official shall certify, using the cover page shown in Appendix A to this chapter (or one similar to it in accordance with OA procedures), that the information contained in the plan is accurate and complete and that no change is required.

(b) *Approval.* Plans and updates to them shall be coordinated with and signed (representing concurrence/endorsement of the plan) by the responsible technical official, the contracting officer, and the cognizant competition advocate (if appropriate), before the plan or update is provided to the approving official. The approving official(s) for plans shall be designated by the HOA in writing and shall be no lower than the Associate Administrator/Regional Administrator/Coast Guard Chief of Staff level.

(c) *Distribution.* When plans or updates to them are distributed, they shall include a completed copy of the cover page.

1207.107-71 Update, approval, and distribution procedures for APPs.

(a) *Updates.* APPs are to be reviewed by the acquisition planner and updated, as necessary, at least every six months until contract award has been made.

(b) *Approval.* APPs, and any updates to them, shall be approved by the HOA or designee. Any delegation of approval authority shall be in writing and reflected in OA procedures. The approving official is responsible for approving both the APP and any updates. APPs shall be approved by June 30 of the calendar year preceding the fiscal year in which procurement initiation is anticipated. APP updates shall be approved by December 31 of each year.

(c) *Distribution.* An informational copy of approved APPs, and updates to them, shall be submitted to the Director, Office of Small and Disadvantaged Business Utilization (S-40), within 15 days of approval as follows:

(1) *For all OAs except FAA and USCG.* All actions where the total procurement estimate (including options) equals or exceeds \$200,000 (\$500,000 for construction).

(2) *For FAA and USCG.* Actions where the total procurement estimate (including options) equals or exceeds:

(i) \$200,000 for all actions that are for Advisory and Assistance Services;

(ii) \$2 million for all other actions.

1207.170 Waivers.

Waiver requests to the planning requirements in this subchapter shall be submitted through the OA approving official to the SPE for approval. Waiver requests shall contain sufficient detail to clearly explain the basis for the request, procedures sought to be waived, and any recommended alternative action.

SUBCHAPTER 1207.2--PLANNING FOR THE PURCHASE OF SUPPLIES IN ECONOMIC QUANTITIES

1207.204 Responsibilities of contracting officers.

(a) The contracting officer shall transmit in writing to the cognizant requirements office either the actual offeror responses or a summary of their salient points.

(b) All transmittals shall request a prompt response which is to indicate whether the acquisition should remain as is, be amended, or cancelled. Before continuing with the negotiation or award of the acquisition, the contracting officer shall decide, in conjunction with the program manager, if continuing outweighs the potential cost saving benefits of delaying the acquisition.

SUBCHAPTER 1207.4--EQUIPMENT LEASE OR PURCHASE

1207.401 Acquisition considerations.

The decision to lease versus purchase equipment shall be documented in the contract file and address, as a minimum, the factors in (FAR) 48 CFR 7.401 and 41 CFR 101-25.504 and 101-26.408.

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CHAPTER 1208

REQUIRED SOURCES OF SUPPLIES AND SERVICES

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CHAPTER 1208

REQUIRED SOURCES OF SUPPLIES AND SERVICES

SUBCHAPTER 1208. 1--EXCESS PERSONAL PROPERTY

1208.101 Definition.

The authority of the agency head under (FAR) 48 CFR 8.101 to make "excess personal property" determinations has been delegated to the offices shown in Appendix A. HOAs or their designees shall notify M-60 within 30 days of any updates to this listing.

SUBCHAPTER 1208. 8--ACQUISITION OF PRINTING AND RELATED SUPPLIES

1208. 802 Policy.

(b) The authority of the head of the agency under (FAR) 48 CFR 8.802(b) to establish a central printing authority for DOT has been delegated to the Chief, Publications Services Division, TASC. Each OA has appointed a printing control point (see Appendix B), whose approval shall be obtained prior to acquiring ~~in any manner~~ any of the supplies or services delineated in (FAR) 48 CFR 8.802(b). HOAs or their designees shall notify M-60 within 30 days of any updates to this listing.

SUBCHAPTER 1208. 11--LEASING OF MOTOR VEHICLES

1208.1102 Presolicitation requirements.

(a)(2) The authority of the head of the requiring agency under (FAR) 48 CFR 8.1102(a)(2) has been delegated to the Office of Security and Administrative Management, OST. While the Office of Security and Administrative Management is responsible for issuing Departmental policy, the OA offices shown in Appendix C are responsible for the certification requirements in (FAR) 48 CFR 8.1102(a). HOAs or their designees shall notify M-60 within 30 days of any updates to this listing.

(c) COCO approval as required by (FAR) 48 CFR 8.1102(c) shall be in writing and included in the contract file.

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APPENDIX A

LISTING OF OA OFFICES RESPONSIBLE FOR MAKING EXCESS PERSONAL PROPERTY DETERMINATIONS

<i>FAA:</i>	NAS Transition and Implementation Service, NAS Support Division (ASM-700)
<i>FHWA:</i>	Office of Management Systems, Operations and Services Division (HMS-20)
<i>FRA:</i>	Office of Procurement Services, Administrative Services Division (RAD-32)
<i>FTA:</i>	Associate Administrator for Administration, Administrative Services Division (TAD-12)
<i>MARAD:</i>	Associate Administrator for Administration, Office of Management Services (MAR-310)
<i>NHTSA:</i>	Associate Administrator for Administration, Administrative Services Division (NAD-50)
I <i>OST/TASC:</i>	Chief, Personal Property and Facilities Management Division, TASC
<i>RSPA:</i>	For Headquarters: Associate Administrator for Management and Administration, Administrative Services (DMA-11); for Volpe National Transportation Systems Center (VNTSC): Office of Administration, Facilities Management Division (DTS-87)
<i>SLSDC:</i>	Office of Finance and Administration, Comptroller
<i>USCG:</i>	Director of Finance and Procurement, Financial Management Division (G-CFM)

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APPENDIX B

LISTING OF OA PRINTING CONTROL POINTS

<i>FAA:</i>	Office of Information Technology (AIT-700)
<i>FHWA:</i>	Operations and Services Division, Publications and Visual Aids Branch (HMS-24)
<i>FRA:</i>	Office of Procurement Services (RAD-30)
<i>FTA:</i>	Associate Administrator for Administration, Administrative Services Division (TAD-12)
<i>MARAD:</i>	Division of Management and Organization, Records Management (MAR-318.1)
<i>NHTSA:</i>	Office of Administrative Operations, General Services Division (NAD-51)
I <i>OST/TASC:</i>	Printing Services Division, TASC
<i>RSPA:</i>	Office of Budget and Programs, Financial Manager (DMA-22)
<i>SLSDC:</i>	Chief, Management Support Division, P.O. Box 520, Massena, NY, 13862
<i>USCG:</i>	Office of Command, Control and Communications, Directives Branch (G-TPS-3).

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APPENDIX C

LISTING OF OA OFFICES AUTHORIZED TO CERTIFY LEASING OF SEDANS AND STATION WAGONS

FAA: NAS Transition and Implementation Service, NAS Support Division (ASM-700)

FHWA: Office of Management Systems, Operations and Services Division (HMS-20)

FRA: Associate Administrator for Administration, Office of Procurement Services (RAD-30)

FTA: Associate Administrator for Administration, Office of Management Planning, Administrative Services Division (TAD-12)

MARAD: Associate Administrator for Administration, Office of Management Services, Division of Space and Management (MAR-313)

NHTSA: Associate Administrator for Administration, Office of Administrative Services, General Services Division (NAD-51)

OST/TASC: Chief, Motor Pool Section, Personal Property and Facility Management Division, TASC; for the IG, Assistant Inspector General for Policy, Planning and Resources, Office of Planning and Resources (JP-20)

RSPA: For Headquarters: Associate Administrator for Administration, Office of Administration, Administrative Services (DMA-11); for VNTSC: Office of Administration, Administrative Services Branch (DTS-872)

SLSDC: Office of Finance and Administration, Comptroller

USCG: Office of Engineering and Development, Program Execution and Management Division (G-ECV-4)

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CHAPTER 1209

CONTRACTOR QUALIFICATIONS

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- 1209.504 Contracting officer responsibilities.
- 1209.506 Procedures.

CHAPTER 1209

CONTRACTOR QUALIFICATIONS

SUBCHAPTER 1209.1--RESPONSIBLE PROSPECTIVE CONTRACTORS

1209.105 Procedures.

1209.105-2 Determinations and documentation.

DOT Form F 4220.1, Determination of Prospective Contractor Responsibility, shall be used to make the determination and document that a contractor is/is not responsible.

SUBCHAPTER 1209.2--QUALIFICATION REQUIREMENTS

1209.202 Policy.

(a)(1) The authority of the head of the agency under (FAR) 48 CFR 9.202(a)(1) to establish a qualification requirement is delegated to the HCA. Prior to establishing a qualification requirement, a written justification prepared by the cognizant technical activity shall be submitted via the contracting officer and the OA's competition advocate to the HCA for approval.

(b) The cognizant technical office shall prepare a written waiver request when applicable. The waiver shall be submitted, via the contracting officer and the OA's competition advocate, to the HCA for approval.

(e) The authority of the head of the agency under (FAR) 48 CFR 9.202(e) is delegated to the HCA. A written justification stating why a procurement should not be delayed in order to comply with (FAR) 48 CFR 9.202(a) shall be prepared by the cognizant technical activity and submitted via the contracting officer and the OA's competition advocate to the HCA for approval.

1209.206 Acquisitions subject to qualification requirements.

1209.206-1 General.

(b) The authority of the agency head under (FAR) 48 CFR 9.206-1 is delegated to the HCA. The cognizant technical activity shall justify that an emergency exists; this justification shall be submitted via the contracting officer and the OA competition advocate to the HCA. The HCA shall determine that an emergency exists that would preclude enforcement of an established qualification requirement.

SUBCHAPTER 1209.3--FIRST ARTICLE TESTING AND APPROVAL

1209.302 General.

The procurement request initiator shall prepare a written statement addressing the factors enumerated in (FAR) 48 CFR 9.302 whenever first article testing and

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approval is required. The statement shall be forwarded with the procurement request to the contracting office.

SUBCHAPTER 1209.4--DEBARMENT, SUSPENSION, AND INELIGIBILITY

1209.402 Policy.

Debarment, suspension, and other actions which render a contractor ineligible to receive contract awards is a serious matter which deserves high level attention since there is an impact not only on DOT, but the entire Federal Government. The DOT procedures to implement the debarment and suspension requirements of (FAR) 48 CFR Subpart 9.4 are set forth in this subchapter.

1209.403 Definitions.

(a) The "debarring official" is the HCA.

(b) The "suspending official" is the HCA.

1209.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(c)(4) Records regarding debarment and suspension actions shall be maintained by the HCA for 3 years after a contractor has been excluded from procurement programs.

(c)(5) The HCA shall establish internal distribution requirements for the list entitled List of Parties Excluded from Federal Procurement and Nonprocurement Programs to ensure compliance with (FAR) 48 CFR 9.404(c)(5). A copy of the OA distribution list shall be provided to the Publication Services, In-house Division (M48) not later than January 1, 1994. M48 shall then notify GSA of the DOT distribution requirements for the list. OAs shall update the list as necessary and provide an updated copy to M48.

1209.405 Effect of listing.

The authority of the agency head under (FAR) 48 CFR 9.405 is delegated to the HCA. The HCA shall determine in accordance with (FAR) 48 CFR 9.405(d)(2) or (d)(3) that a bid or offer should be considered from a contractor included on the listing.

1209.405-1 Continuation of current contracts.

The authority of the agency head under (FAR) 48 CFR 9.405-1(a) and (b) is delegated to the HCA.

1209.405-2 Restrictions on subcontracting.

The authority of the agency head under (FAR) 48 CFR 9.405-2(a) is delegated to the HCA.

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1209.406 Debarment.

1209.406-1 General.

(c) The authority of the agency head under (FAR) 48 CFR 9.406-1(c) is delegated to the HCA. However, see TAM 1223.506(e) regarding waivers to debarment or suspension determinations for actions under (FAR) 48 CFR Subpart 23.5, Drug-Free Workplace.

1209.406-3 Procedures.

(a) *Investigation and referral.* The COCO shall promptly report a proposed debarment action directly to the HCA unless otherwise authorized by OA procedures. The report shall be in writing and coordinated with OA legal counsel before the report is signed by the COCO and sent to the HCA. The report shall contain the following information, if available:

(1) Name, address and telephone number for the point of contact for the activity making the report;

(2) Name and address of the contractor;

(3) Names and addresses of the members of the board, principal officers, partners, owners, and managers;

(4) Names and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship;

(5) For each contract affected by the conduct being reported--

(i) The contract number;

(ii) Description of supplies or services;

(iii) The amount;

(iv) The percentage of completion;

(v) The amount paid to the contractor;

(vi) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and

(vii) The amount due to the contractor.

(6) For any other contracts outstanding with the contractor or any of its affiliates--

(i) The contractor number(s);

(ii) The amount(s);

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- (iii) The amounts paid to the contractor;
- (iv) Whether the contract(s) is assigned under the Assignment of Claims Act and, if so, to whom; and
- (v) The amount(s) due the contractor;
- (7) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor;
- (8) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated);
- (9) The comments and recommendations of the contracting officer and each higher level contracting review authority regarding--
 - (i) Whether to suspend or debar the contractor;
 - (ii) Whether to apply limitations to the suspension or debarment;
 - (iii) The period of any recommended debarment; and
 - (iv) Whether to continue any current contracts with the contractor (explain why a recommendation regarding current contract is not included);
- (10) When appropriate, as an enclosure to the report--
 - (i) A copy or extracts of each pertinent contract;
 - (ii) Witness statements or affidavits;
 - (iii) Copies of investigative reports;
 - (iv) Certified copies of indictments, judgments, and sentencing actions;and
 - (v) Any other appropriate exhibits or documents.

(b) *Decisionmaking process.* After receipt of the COCO report, the HCA may request from interested parties (including the contractor if deemed appropriate) a meeting or additional supporting information to assist in the debarment decision.

(c) *Notice of proposal to debar.* The notice shall be in writing and coordinated with OA legal counsel prior to submission to the HCA. The HCA shall provide a copy of the dated, signed notice of the debarment action to the COCO.

(d) *Debarring official's decision.* When it is found that the contractor's submission raises a genuine dispute over facts material to the proposed debarment, the HCA may request the DOT Board of Contract Appeals (BCA) to conduct fact finding and provide a report containing the results of the fact finding.

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(e) *Notice of debarring official's decision.* The HCA shall notify the COCO prior to deciding whether or not to impose debarment. The COCO shall be furnished the original of the signed HCA decision to include in the contract file. The HCA shall provide a copy of the decision to GSA in accordance with (FAR) 48 CFR 9.404(c). A copy of all notices to GSA shall be provided to the SPE within 2 working days after they are sent to GSA.

1209.407 Suspension.

1209.407-1 General.

The authority of the agency head under (FAR) 48 CFR 9.407-1(d) is delegated to the HCA. However, see TAM 1223.506(e) regarding waivers to debarment or suspension determinations for actions under (FAR) 48 CFR Subpart 23.5, Drug-Free Workplace.

1209.407-3 Procedures.

(a) *Investigation and referral.* The COCO shall promptly report a proposed suspension action directly to the HCA unless otherwise authorized by OA procedures. The report shall be in writing and coordinated with OA legal counsel before the report is signed by the COCO and sent to the HCA. The report shall contain the information listed in TAM 1209.406-3.

(b) *Decisionmaking process.* After receipt of the COCO report, the HCA may request from interested parties (including the contractor if deemed appropriate) a meeting or additional supporting information to assist in the suspension decision.

(c) *Notice of suspension.* The notice shall be in writing and coordinated with OA legal counsel prior to submission to the HCA. The HCA shall provide a copy of the dated, signed notice of the suspension action to the COCO.

(d) *Suspending official's decision.* When it is found that the contractor's submission raises a genuine dispute over facts material to the proposed suspension, the HCA may request the DOTBCA to conduct fact finding and provide a report containing the results of the fact finding. The HCA shall notify the COCO prior to deciding whether or not to suspend. The COCO shall be furnished the original of the signed HCA decision, which shall be included in the contract file. The HCA shall provide a copy of the decision to GSA in accordance with (FAR) 48 CFR 9.404(c). A copy of all notices to GSA shall be provided to the SPE within 2 working days after they are sent to GSA.

1209.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a)(2) When the offeror indicates the existence of an indictment, charge, conviction, or civil judgment, the contracting officer shall obtain from the offeror, the information deemed necessary concerning the issues and seek the advice of legal counsel on the affirmative statement(s). The HCA shall be notified orally of the facts and the contracting officer's proposed responsibility determination prior to proceeding with the contract award.

SUBCHAPTER 1209.5--ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

1209.503 Waiver.

The authority of the agency head under (FAR) 48 CFR 9.503 is delegated to the HCA. This authority may not be redelegated below the HCA level.

1209.504 Contracting officer responsibilities.

The authority of the HCA under (FAR) 48 CFR 9.504(c) is retained by the HCA.

1209.506 Procedures.

The authority of the HCA under (FAR) 48 CFR 9.504(d)(3) is retained by the HCA.

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CHAPTER 1210

MARKET RESEARCH

(RESERVED)

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CHAPTER 1211

DESCRIBING AGENCY NEEDS

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CHAPTER 1211

DESCRIBING AGENCY NEEDS

1211.002 Policy.

(b) The use of the metric system in DOT acquisitions is encouraged. OA requiring offices are responsible for utilizing the metric system in specifications, statements of work, and other related procurement documents. Procurement requests shall stipulate requirements using the metric system of measurement in accordance with the OA's metric transition plan. DOT Order 1020.1 series, Department of Transportation Transition to the Metric System, provides the DOT policy and administrative procedures, including the offices responsible for specific functions pertaining to DOT's use and transition to the metric system.

SUBCHAPTER 1211.1--SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

1211.104 Items peculiar to one manufacturer.

Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture.

(a) When the exception under (FAR) 48 CFR 11.104(a) is used, the following applies:

(i) Brand name or equal purchase descriptions shall specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirement. (See (TAR) 48 CFR 1211.104-70.) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(ii) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g., a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

1211.104-70 Brand name or equal purchase descriptions.

(a) The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Brand name or equal purchase descriptions shall not be used to acquire a particular product under the guise of competitive acquisition to the exclusion of other products that would meet the actual needs.

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(b) Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision at (TAR) 48 CFR 1252.211-70 would be impracticable, the requirement to include the entry described in (TAR) 48 CFR 1211.104-70(b) shall not apply. If the provision is included in the solicitation for other reasons, there also shall be included in the solicitation a listing to identify either the component parts (described by brand name or equal purchase descriptions) to which the provision applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item

(c) A written statement prepared and signed by the technical official responsible for the procurement request and concurred in writing by the contracting officer shall be included in the contract file to justify use of brand name products or brand name or equal purchase descriptions.

SUBCHAPTER 1211.5--LIQUIDATED DAMAGES

1211.502 Policy.

(d) The authority of the head of the agency under (FAR) 48 CFR 11.502(d) is delegated to the HCA.

SUBCHAPTER 1211.6--PRIORITIES AND ALLOCATIONS

1211.602 General.

(c) For the purposes of the Defense Priorities and Allocations System (DPAS), the following apply:

(1) The Commandant of the USCG is delegated the authority with power of redelegation by the Secretary of the Navy under Navy Instruction (NAVMAT 4830.17 series) to use the authority of the DPAS regulation (15 CFR 700) to acquire materials, products, and services in support of certified USCG national defense related programs. When using the DPAS authority, the USCG shall be governed by all of the policy directives and procedures issued by the Navy.

(2) Under 15 CFR 700, FAA is an "associated agencies" of the Department of Defense (DOD) and, as such, must obtain from DOD, on an as needed basis, the authority to use the system. FAA must submit the request to the Assistant Secretary of Defense, Production and Logistics, Pentagon, Room 2A318, Washington, DC, 20301-8000, Attention: DPAS Office. Each request shall describe the item to be procured and the program/project for which the rating will be used; the criticality of the program/project; and any political sensitivities of the program/project.

(3) All other OAs must submit their requests to the Department of Commerce at the address under TAM 1211.603(g)(3).

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(d) The authority of the agency head under (FAR) 48 CFR 11.602(d) is delegated to the HCA.

1211.603 Procedures

(e) and (f) Contracting officers shall comply with the following procedures when using the DPAS to support delegate agency certified programs.

(1) **Assignment of priority ratings by a delegate agency.** When authorized (see (TAR) 48 CFR 1211.602), contracting officers may assign priority ratings only to those contracts and orders placed with contractors to acquire products, materials, and services in support of that agency's national defense related certified programs. Generally, only a "D0" priority rating may be used on these contracts or orders. The "DX" priority rating may be used only on those contracts and orders placed in support of certified programs approved by the President as being of the highest national defense urgency.

(2) **Assignment of priority ratings by other DOT OAs.** If a non-delegate DOT OA issues a contract or order for the USCG or another Federal delegate agency, the OA, if requested by the delegate agency, may assign the appropriate "D0" or "DX" rating to the contractual document. The contracting officer of the non-delegate agency shall include a statement in the contractual document to indicate that the contract or order (or a specific item(s) under the contract or order) is being issued or procured for the delegate agency.

(3) **Authorized Programs.** Appendix A lists those DOD program categories certified for DPAS support. A complete list of certified programs is found in Schedule 1 to 15 CFR 700. The USCG certified programs generally include all USCG activities directly related to the national defense.

(g) Special priorities assistance.

(1) The USCG shall designate a point of contact at their Headquarters level to assist their contracting offices with requests for special priorities assistance (SPA).

(2) When the Department of the Navy (DON) funds a program of MARAD, contracting officers for MARAD should obtain SPA from the DON in accordance with MARAD's written procedures.

(3) If contracting officers cannot resolve requests for SPA, the requests shall be forwarded to the appropriate office at Headquarters for assistance and further action. If the Headquarters office cannot provide assistance, Headquarters may submit the original and two copies of Form ITA-999, Request for Special Priorities Assistance, via the appropriate channels, to the DOC, Office of Industrial Resource Administration (OIRA), Room 3878, Washington, DC, 20230, Attention: DPAS. The form shall be thoroughly documented with all actions taken in attempting to resolve the request at the field and Headquarters levels. The form may be obtained from the OIRA or the Defense Contract Management Command office nearest the contracting office. Questions concerning DPAS may be directed to the OIRA by telephoning (202) 482-3634.

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(h) **Violations of the DPAS.** Violations of the DPAS by a contractor or subcontractor, at any tier, shall be reported to the DOC in accordance with OA procedures.

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APPENDIX A

LISTING OF RATINGS AND AUTHORIZED PROGRAM

Ratings

Authorized Program

A-1	Aircraft
A-2	Missiles
A-3	Ships
A-4	Tanks-Automotive
A-5	Weapons
A-6	Ammunition
A-7	Electronic and Communications Equipment
B-1	Military Building Supplies
B-8	Production Equipment (for Defense Contractor's Accounts)
B-9	Government-Owned Production Equipment
C-2	Department of Defense (DOD) Construction
C-3	Maintenance, Repair, and Operating Supplies for DOD Facilities
C-8	Controlled Materials for Defense Industrial Supply Center
C-9	Miscellaneous (e.g., construction equipment, medical and dental supplies and equipment) and all others not identified to any other program

TRANSPORTATION ACQUISITION MANUAL

CHAPTER 1212

ACQUISITION OF COMMERCIAL ITEMS

(RESERVED)

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CHAPTER 1213

I SIMPLIFIED ACQUISITION PROCEDURES

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CHAPTER 1213

I SIMPLIFIED ACQUISITION PROCEDURES

SUBCHAPTER 1213.1--GENERAL

1213.104 Procedures.

Except for acquisitions of \$2,500 or less, Form DOT F 4230.1, Simplified Acquisition Purchase Summary, may be used to document purchases covered by (FAR) 48 CFR Part 13 and placed in the file.

1213.106 Purchases exceeding the micro-purchase threshold.

1213.106-1 Soliciting competition, evaluation of quotes, and awards.

(a) *Soliciting competition.*

(7)(i) The authority of the HCA under (FAR) 48 CFR 13.106-1(a)(7)(i) is delegated to the COCO. Any exemption by the COCO shall be justified in writing. The need for the exemption shall be revalidated at least annually.

I 1213.107 Solicitation forms.

(a) *Forms.* SF 18, Request for Quotations, shall be used to obtain written quotations as prescribed in (FAR) 48 CFR 13.107(a).

SUBCHAPTER 1213.2--BLANKET PURCHASE AGREEMENTS

1213.203 Establishment of Blanket Purchase Agreements.

1213.203-1 General.

(i) Optional Form (OF) 347, Order for Supplies or Services, as supplemented by Appendix A and, if required by OA procedures, Standard Form (SF) 1449, Solicitation/Contract/Order for Commercial Items, may be used to establish a Blanket Purchase Agreement (BPA).

1213.204 Purchases under Blanket Purchase Agreements.

1213.204-70 Modifying a Blanket Purchase Agreement.

The SF-30 shall be used to modify a BPA.

1213.205 Review procedures.

1213.205-70 Review responsibility.

(a) When the authorized callers under the BPA are not within the OA which issued the BPA, the contracting officer or the designated representative of the contracting officer within the OA using the BPA is responsible for the review.

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SUBCHAPTER 1213. 4 - IMPREST FUND

1213. 402 Agency responsibilities.

(c) Guidance governing the use and administration of imprest funds within DOT is contained in DOT Order 2770.7 series, Imprest Fund Manual, and the Office of Financial Management (B-30) memoranda dated September 19, 1991 and October 21, 1991, which increased the limitation for single, routine imprest fund transactions to \$500 (except that travel reimbursements paid through the Washington, DC, Headquarters imprest funds are limited to \$250). Alternative measures, such as the GSA Government Travel Charge Card or travelers checks for travel advances and expenses and the Governmentwide commercial credit card or third party drafts for making simplified acquisitions should be used to the maximum extent possible to minimize the number of imprest fund transactions.

HCAs shall establish procedures for designation of personnel authorized to approve requisitions and make purchases using imprest funds. HCAs may require that only contracting officers may approve requisitions using imprest funds.

1213. 403 Conditions for use.

(a) The authority of the agency head under (FAR) 48 CFR 13.403(a) is delegated to the Director of the Office of Financial Management (B-30).

1213. 404 Procedures.

(f) The individual making an approved purchase from the imprest fund shall be responsible for compliance with the documentation requirements of (FAR) 48 CFR 13.404(f) and DOT Order 2770.7 series. The individual having acquisition authority to approve purchases from the imprest fund shall be responsible for checking the authorized purchase requisition for compliance with the internal control requirements mandated by DOT Order 2770.7 series.

SUBCHAPTER 1213. 5 - PURCHASE ORDERS

1213. 503 Obtaining contractor acceptance and modifying purchase orders.

(b) The SF 30 is to be used to modify a purchase order.

1213. 505 Purchase order and related forms.

1213. 505-1 Optional Form (OF) 347, Order for Supplies and Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.

(a) *General.*

(2) OFs 347 and 348 and, if required by OA procedures, SF-1449 may be used for the purposes described in (FAR) 48 CFR 13.505-1(a).

(b) *Clauses.* Appendix A supplements the purchase order terms and conditions (Optional Form 347 Back) generally applicable to simplified acquisitions. Appendix A shall be used as an attachment to OFs 347 and 348 unless an OA equivalent supplemental clause list has been authorized for use by the COCO.

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1213. 505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

(b)(1) Fuel and lubricant purchases for USCG cutters and aircraft are permitted up to a limitation of \$25,000.

(d) OAs are responsible for establishing procedures to control the use of SF 44s and to account for all purchases made using the form, including:

(1) Maintenance of a list of designated individuals authorized to make purchases using the form;

(2) Controls for issuance of the form to authorized individuals; and

(3) Review of purchase transactions using the form to assure compliance with authorized procedures.

SUBCHAPTER 1213. 70--DEPARTMENT OF TRANSPORTATION PURCHASE/CREDIT CARD PROGRAM

1213. 7000 General.

DOT policies and procedures for the use of the DOT Purchase/Credit Card Program are contained in Appendix B.

SUBCHAPTER 1213. 71--DEPARTMENT OF TRANSPORTATION PROCEDURES FOR ACQUIRING TRAINING SERVICES

1213. 7100 General.

DOT policies and procedures for acquiring training services using simplified acquisition procedures under a delegation of procurement authority are contained in Appendix C.

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APPENDIX A

PURCHASE ORDER TERMS AND CONDITIONS--DOT

The following FAR provisions/clauses supplement the purchase order terms and conditions (Optional Form 347). An asterisk (*) indicates the provision/clause must be incorporated in full text; all others may be incorporated by reference in accordance with FAR 52.252-3. Upon request, the contracting Officer will make their full text available.

FAR 52.203-3	Gratuities (APR 84)
FAR 52.212-13	Stop-Work Order (AUG 89)
FAR 52.219-1	Small Business Program Certifications (OCT 95)
FAR 52.222-3	Convict Labor (APR 84)
FAR 52.232-1	Payments (APR 84)
FAR 52.232-8	Discounts for Prompt Payment (APR 89)
FAR 52.232-28	Electronic Funds Transfer of Payment (APR 89)
FAR 52.232-25	Prompt Payment (MAR 94)
FAR 52.233-1	Disputes (MAR 94)
FAR 52.233-3	Protest after Award (AUG 89)
FAR 52.243-1	Changes-Fixed Price (APR 87)

The following clauses marked with an "X" also apply to this solicitation/contract:

OPTIONS

___	FAR 52.217-3	Evaluation Exclusive of Options (APR 84)
___	FAR 52.217-4	Evaluation of Options Exercised at Time of Contract Award (JUN 88)
___	FAR 52.217-5	Evaluation of Options (JUL 90)
___	FAR 52.217-6	Option for Increased Quantity (MAR 89)
___	FAR 52.217-8	Option to Extend Services (AUG 89)
___	FAR 52.217-9	Option to Extend Terms of the Contract (MAR 89)

SERVICES

___	FAR 52.222-40	Service Contract Act less than \$2,500 (MAY 89)
___	FAR 52.222-41	Service Contract Act (MAY 89)
* ___	FAR 52.222-42	Statement of Equivalent Rates for Federal Hires (MAY 89)
___	FAR 52.222-43	Fair Labor Standard Act and Service Contract Act-Price Adjustment (MAY 89)
___	FAR 52.222-47	Service Contract Act Minimum Wages and Fringe Benefits (MAY 89)
* ___	FAR 52.222-48	Exemption from Service Contract Act (MAY 89)
___	FAR 52.249-1	Termination for Convenience, Firm-Fixed Price, Services, Short Form (APR 84)

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PURCHASE ORDER TERMS AND CONDITIONS--DOT

SUPPLIES

- * _____ FAR 52.211-16 Variation in Quantity (APR 84)
- _____ FAR 52.225-3 Buy American Act-Supplies (JAN 94)
- _____ FAR 52.246-16 Responsibility for Supplies (APR 84)
- _____ FAR 52.249-1 Termination for Convenience, Firm-Fixed Price,
Supplies, Short Form (APR 84)

OTHER CLAUSES

- _____ FAR 52.204-3 Tax Identification Number (TIN) (MAR 94)
TIN: _____ (Offeror provides)
- _____ FAR 52.204-4 Printing/Copying Double Sided on Recycled
Paper (MAY 95)
- _____ FAR 52.207-4 Economic Purchase Quantity--Supplies (non GSA/
FSS) (AUG 87)
- _____ FAR 52.207-5 Option to Purchase Equipment (FEB 95)
- _____ FAR 52.208-4 Vehicle Lease Payments (APR 84)
- _____ FAR 52.208-5 Condition of Leased Vehicles (APR 84)
- _____ FAR 52.208-6 Marking of Leased Vehicles (APR 84)
- _____ FAR 52.208-7 Tagging of Leased Vehicles (APR 84)
- _____ FAR 52.213-1 Fast Pay (AUG 88)
- _____ FAR 52.213-2 Invoices (AUG 84) {ADVANCE PAY}
- _____ FAR 52.213-3 Notice to Supplier (APR 84)
- _____ FAR 52.222-20 Walsh Healey Act over \$10,000 (APR 84)
- _____ FAR 52.222-21 Certification-Nonsegregated Facilities (APR 84)
- _____ FAR 52.222-26 Equal Opportunity over \$10,000 (APR 84)
- _____ FAR 52.222-35 Affirmative Action Vietnam Era (APR 84)
- _____ FAR 52.222-36 Affirmative Action for Handicapped (APR 84)
- _____ FAR 52.222-37 Employment Report Disabled/Vietnam (JAN 88)
- * _____ FAR 52.223-5 Certification Regarding a Drug-Free Workplace (JUL 95)
(for award to individuals)
- _____ FAR 52.223-6 Drug Free Workplace (JUL 90)
(for award to individuals)
- _____ FAR 52.232-16 Progress Payments (JUL 91)
- _____ FAR 52.232-18 Availability of Funds (APR 84)
- _____ FAR 52.232-28 Electronic Funds Transfer Payment Methods (APR 89)
- _____ FAR 52.245-2 Government Property Fixed Price (DEC 89)
- _____ FAR 52.245-4 Government Furnished Property (APR 84)
- _____ FAR 52.246-1 Contractor Inspection (APR 84)
- _____ FAR 52.247-29 F. O. B. Origin (JUN 88)
- _____ FAR 52.247-34 F. O. B. Destination (NOV 91)
- _____ FAR 52.247-35 F. O. B. Destination Within Consignee Premises (APR 84)
- _____ FAR 52.249-8 Default Fixed Price (APR 84)

DEPARTMENT OF TRANSPORTATION PURCHASE/CREDIT CARD PROGRAM

I. GENERAL.

These policies and procedures replace the Office of Financial Management (M-80) Interim Small Purchase Credit Card Policy memorandum issued November 7, 1990.

II. APPLICABILITY.

These policies and procedures apply to all DOT operating administrations (OA). OAs may authorize designated field offices to develop their own internal procedures to implement the DOT Purchase/Credit Card Program

III. DEFINITIONS.

The definitions set forth below supplement those set forth in the General Services Administration (GSA) Governmentwide Commercial Credit Card Service (GCCCS) contract. The current GCCCS contract which is effective through November 29, 1994, is provided as Attachment 1. If GSA elects to exercise the four one-year renewal option periods contained in the contract, the contract will be modified accordingly. The terms "small purchases" and "small purchase procedures" used throughout Attachment 1 mean "simplified acquisitions" and "simplified acquisition procedures."

A. "Agency/Organization Program Coordinator" (also referred to as Contracting Officer's Technical Representative) means an individual designated by the ordering agency/organization to perform contract administration within the limits of delegated authority. The individual shall have overall responsibility for the Purchase/Credit Card Program within their bureau, agency/organization or region and may determine who the approving officials or cardholders will be.

B. "Approving Official" means a Government employee(s) within the OA who has a number of cardholders under his/her purview and determines that cardholders' purchases are made within applicable regulations, policies, and procedures.

C. "Approving Official Report" means a monthly report sent by the card issuing bank to each approving official summarizing the purchase and credits of each cardholder under the approving official's purview.

D. "Card Issuing Bank" means the bank which issues cards to cardholders and submits monthly statements to cardholders, approving officials, and finance offices detailing amounts of purchases and credits made by cardholders.

E. "Cardholder" means the individual Government employee within the OA who is a warranted contracting officer or to whom a written delegation of procurement authority (DPA) has been issued by the cognizant Chief of the Contracting Office (COCO) or designee granting the use of the purchase/credit card.

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F. "Cardholder Statement" means a monthly statement sent by the card issuing bank to each cardholder itemizing all purchase and credit transactions made within the established billing period.

G. "Delegation of Procurement Authority (DPA)" means the authorizing document, approved and signed by the COCO or designee, granting specific procurement authority to the individual Government employee for use of the purchase/credit card. DPAs for non-warranted personnel generally may not exceed \$2,500 unless specifically authorized by the Chief of the Contracting Office.

H. "Disputes Contact" means a Government employee(s) within the OA who is responsible for resolving disputed purchases, credits for sales tax refunds, and credits for billing errors with the card issuing bank.

I. "DOT Contracting Officer's Technical Representative (COTR)" (also referred to as Agency Program Coordinator) means the Government employee designated to perform contract administration functions within the limits of delegated authority and who serves as the liaison between the card issuing bank and the OA. The DOT COTR is located in the Transportation Administrative Service Center (TASC).

J. "Finance Office Contact" means a Government employee(s) within the OA who has the responsibility for responding to payment inquiries from the COTRs, card issuing bank, approving officials and cardholders.

K. "International Merchant Purchase Authorization Card (I.M.P.A.C.)" means the current name of the GCCCS Program card. I.M.P.A.C. is the registered trademark of the Rocky Mountain Bankcard system, the current GSA contractor providing purchase/credit card services to the Federal Government.

L. "Monthly Cardholder Purchase Limit" means the spending limit imposed on a cardholder's cumulative purchases in a given month.

M. "Monthly Office Limit" means the monthly spending limit imposed on each approving official's account.

N. "Nonexpendable Personal Property" means property which has a normal life expectancy of more than one year, has continuing use as a self-contained unit, is not consumed in use, does not lose its identity when put to use, or does not ordinarily become a non-severable component of other property.

O. Organization Program Coordinator means the Government employee within the OA who will perform administration of the technical requirements of the Purchase/Credit Card Program within the OA.

Q. "Single Purchase Limit" means the spending limit imposed on a cardholder for individual purchase/credit card transactions.

IV. PROGRAM STRUCTURE.

The design of the DOT Purchase/Credit Card Program is based on a multiple

level system developed to accommodate varying organizational structures within Federal Government agencies. It provides for reporting of card purchases to different levels, depending on each agency's requirements. The program structure is categorized by "Level Numbers," with each level identifying a specific area within the organization's structure. The various levels have been established to provide a solid system of checks, balances and audit controls from the lowest to the highest level within each organization.

A. "Level 1" represents the U.S. Government as a whole. This number distinguishes the GCCCS Program from non-Government commercial credit card programs or services operated within the VISA system. The unique prefix number, which identifies the U.S. Government under the GCCCS Program, is "4716." This number will always be the first four numbers on cards issued under the GCCCS Program. Authorization and processing controls, which differ from personal credit card accounts, have been established for accounts under the GCCCS Program.

B. "Level 2" identifies the participating Executive Office, Department, independent agency, or commission. This two-digit code generally corresponds to the Agency Local Code use by the U.S. Department of Treasury. The Level 2 number which identifies DOT is "69."

C. "Level 3" is a two-digit code which identifies the next major organizational sub-division within DOT. DOT Level 3 numbers identify the OAs within DOT.

D. "Level 4" generally identifies a participating region, office, sub-unit or component unit located within the Level 3. A four-digit code is assigned to identify each Level 4 participant.

E. "Level 5" is generally the level at which approving officials are established. The Level 5 number or code is generally determined by the OA's finance office.

F. "Level 6" is the cardholder, and the only level to which a purchase/credit card is issued.

V. OA RESPONSIBILITIES.

A. Internal Procedures. Each OA shall:

1. Develop written internal Purchase/Credit Card Program procedures within the scope of the applicable GSA contract. The minimum elements to be addressed are set forth therein;

2. Ensure that all prospective approving officials understand and comply with the validation requirements.

3. Submit approved purchase/credit card forms to the card issuing bank;

4. Submit changes to cardholder single purchase or monthly purchase limits, or approving official monthly office limits to the card issuing bank;

5. Submit account cancellations to the card issuing bank; and

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6. Coordinate the card reissuance report with approving officials and inform the card issuing bank which purchase/credit cards should be reissued (Note: Renewal cards will not be reissued without prior approval.)

B. OA Organization Program Coordinator. Each OA shall:

1. Appoint an Organization Program Coordinator, generally located within the Headquarters office, who will have overall responsibility for administering the Purchase/Credit Card Program within the OA.

2. Provide the COTR name, work address, routing symbol, room and telephone numbers to the Agency Program Coordinator (TASC). The OA Organization Program Coordinator will be the OA's central point of contact for GCCCS Program related issues.

C. Training. Each OA shall develop training which will ensure that potential approving officials and cardholders fully understand their responsibilities regarding procurement regulations, finance requirements and internal procedures under the Purchase/Credit Card Program. The OA shall ensure that all prospective cardholders understand and comply with the monthly statement validation requirements, as set forth in the applicable GSA GCCCS Program contract. Purchase/credit cards shall not be issued to potential cardholders until they have received training and DPAs. OAs may contact the Agency Program Coordinator in M-60 for assistance and information regarding existing training videos and manuals.

1. *Procurement Training.* Procurement training shall, at a minimum, address the requirements of Federal Acquisition Regulation (FAR) Part 3 (Improper Business Practices and Personal Conflicts of Interest), Part 8 (Required Sources of Supplies and Services), Part 13 (Simplified Acquisition Procedures), Part 22 (Acquisition of Labor Laws to Government Acquisitions), Part 25 (Foreign Acquisition), Appendix A to Part 39 (Acquisition of Information Resources); the corresponding Transportation Acquisition Regulation (TAR); Transportation Acquisition Manual (TAM); the applicable GSA contract; and internal OA procedures.

2. *Finance Training.* Finance training shall, at a minimum, address the requirements for safekeeping of purchase/credit cards and account numbers, retention of receipts for charges and credits for purchases, returns and disputed items, record keeping for purchase/credit card purchases, timely validation of monthly statements of account, summarization of accounting data on monthly statements of account, procedures to follow for account set-up, account changes and cancellation, disputes resolution, and procedures to follow if a purchase/credit card is lost or stolen.

3. *Property Control Training.* OAs are encouraged to include property management and control training to address the requirements for notifying the appropriate officials (i.e., property manager, property officer, property accountable officer) of delivery of non-expendable personal property in order to assure proper handling and inventory control of items ordered using the purchase/credit card.

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D. Delivery Order Issuance. To begin participation in the GCCCS Program each OA or designated field office must submit a delivery order (D.O.) to the card issuing bank requesting participation in the program. A copy of the developed internal procedures must be forwarded as an attachment to the D.O. The D.O. may be prepared on an OF 347, Order for Supplies or Services, or may be submitted in letter format. At a minimum, the D.O. should provide names and telephone numbers for the OA Organization Program Coordinator, the Finance Office Contact, and the Disputes Office Contact. OAs may assign a different individual for each of these contact points, may elect to assign one individual for each of the contact points, or may assign more than one individual to each of the contact points.

E. Account Set-Up. The card issuing bank will provide the cardholder and approving official with account information in accordance with the applicable GSA contract.

1. *Qualifications.* OAs are responsible for determining the professional responsibility of prospective cardholders and approving officials.

2. *Account Set-Up Forms.* Set-up forms completed by prospective approving officials and cardholders should be sent to the OA Organization Program Coordinator or designee, for review. The OA Organization Program Coordinator or designee, will review each approving official and cardholder application for accuracy and completeness. The prospective cardholder set-up form should be approved by the cognizant approving official, who shall forward the form to the card issuing bank for processing and issuance of the purchase/credit card.

3. *Purchase Limitations.* The purchase limitations which are established under the GCCCS Program should generally be based upon budgetary constraints and actual need, as follows:

a. *Single Purchase Limit.* The cognizant approving official will determine the single purchase limit when initiating each cardholder's account set-up form. The cardholder's single purchase limit must be supported with a properly approved DPA in an amount equal to or greater than the established single purchase limit. Single purchase limit codes are reflected on the reverse of the cardholder account set-up forms.

(1) A single purchase/credit card transaction may consist of the purchase of a number of individual items, the sum of which (including any shipping costs) may not exceed the single transaction purchase limit. A requirement which would exceed an individual cardholder's single transaction purchase limitation shall not be divided or "split" into two or more transactions to stay under the single transaction purchase limitation. OAs are encouraged to establish realistic single transaction purchase limits which represent the dollar amount an individual cardholder's transactions will generally fall within. The single transaction purchase limit for non-warranted personnel generally may not exceed \$2,500.

(2) Except for credit card purchases of training services which are limited to the micro-purchase threshold of \$2,500 (FAR 13.6), warranted

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contracting officers may be authorized single transaction purchase limits up to the simplified acquisition threshold limit as defined in FAR 48 CFR Part 13.

b. *Monthly Cardholder Purchase Limit.* The cognizant approving official will determine the monthly purchase limit for each cardholder under his or her purview.

c. *Monthly Office Limit.* The monthly office limit is the total monthly limit established for each approving official's account by the funds administrator/accounting certification official. This figure is generally computed by combining the monthly purchase limits of all cardholders under the approving official's purview. It should be noted that whenever a cardholder's monthly purchase limit is increased, the corresponding approving official's monthly office limit must also be increased accordingly. Failure to do so may result in purchase/credit card transaction delays.

4. *Finance office reports.* The finance office will receive monthly finance office reports from the card issuing bank which will have summary totals of all of the purchases and credits of approving officials under their cognizance. The finance office report generally represents the invoice from the bank.

VI. INDIVIDUAL RESPONSIBILITIES.

The following are some examples of GCCCS Program official responsibilities:

A. OA. The OA is responsible for the overall operation of the Purchase/Credit Card Program within their organization and may delegate the responsibilities delineated below to the OA Organization Program Coordinator or other designated official(s) as they determine appropriate. These responsibilities include:

1. Taking appropriate action to inform organizations within the OA that the DOT Purchase/Credit Card Program is available for use;

2. Distributing account set-up forms to prospective cardholders and approving officials;

3. Coordinating training for cardholders and approving officials;

4. Approving applications for cardholders and approving officials;

5. Approving changes in authorized merchant codes, single and monthly cardholder purchase limits, single and monthly office spending limits;

6. Canceling purchase/credit card privileges of cardholders; and

7. Receiving monthly management reports from the card issuing bank.

B. OA Organization Program Coordinator. The OA Organization Program Coordinator or designee will generally perform all technical aspects of contract

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administration and will be the primary liaison between the finance office, disputes contact, and the card issuing bank. The OA Organization Program Coordinator or designee will have responsibility for:

1. Ensuring each designated cardholder receives training and a DPA properly approved by the COCO or designee; and

2. Making the tax exempt number available to cardholders and approving officials.

C. Finance Office Contact. The finance office contact is generally responsible for payment of all authorized and certified purchases to the card issuing bank. Finance offices will receive reports from the card issuing bank which will have summary totals of all of the purchases and credits of approving officials under their cognizance. The finance office report generally represents the invoice from the bank. The finance office will have responsibility for:

1. Certifying for payment all authorized card transactions;

2. Reviewing the approving official statements along with the accompanying cardholder's statements to verify that the transactions were authorized and that goods or services were received and accepted or returned;

3. Reconciling the cardholder's statements to summary totals on the approving official's statement, including annotating and resolving any discrepancies with the approving official prior to releasing payment; and

4. Making payment to the card issuing bank in accordance with the Prompt Payment Act. Accordingly, if finance offices receive late approving official statements, interest penalties may be incurred.

D. Approving Official. The approving official will generally be responsible for nominating potential cardholders within his or her purview and for administering the Purchase/Credit Card Program for those cardholders. The following are some examples of approving official responsibilities:

1. Preparing and submitting cardholder and approving official account set-up forms, and maintaining forms and other required information to the OA Organization Program Coordinator or designee;

2. Determining the appropriate dollar amount of single transaction purchase limits for each cardholder under his/her purview;

3. Ensuring that all cardholders validate account purchases and credits itemized on cardholder statements within seven calendar days after receipt or in the absence (planned or otherwise) of the cardholders, reconciling the cardholder's monthly statements within seven days after receipt;

4. Verifying that all purchases by cardholders were authorized purchases;

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5. Ensuring the proper accounting classification data and any disputed items are clearly documented;

6. Promptly processing for payment all cardholder's monthly statements of account;

7. Initiating appropriate action if a cardholder uses a purchase/credit card in an unauthorized manner, including cancellation of the cardholder's account and disciplinary action if appropriate; and

8. Confirming written notification to the card issuing bank and OA within five working days following the loss or theft of a purchase/credit card.

E. Cardholder. The cardholder is responsible for executing purchase/credit card transactions within the limits of his/her DPA; complying with the FAR, FIRMR, TAR, TAM, the applicable GSA contract, and internal OA guidance; and verifying that:

1. Purchases and credits itemized on his or her monthly cardholder statement of account are only for goods or services received or returned;

2. Sales tax has not been charged;

3. Merchants have not charged the account prior to the date of shipment; and

4. Merchants have not passed on their VISA interchange fees to the Government.

Care shall be exercised by all Purchase/Credit Card Program officials to safeguard cardholder account information when disposing of management or financial reports received from the card issuing bank.

VII. GENERAL GCCCS PROGRAM INFORMATION.

A. Receipt of the Purchase/Credit Card. The card issuing bank will send the card directly to the cardholder at the work address specified on the set-up form. Upon receipt of the purchase/credit card, the cardholder must immediately sign the acknowledgement form and return it to the card issuing bank. Failure to do so will result in generation of the Card Receipt Acknowledgement Outstanding Report to the cognizant approving official.

B. Purchase/Credit Card Appearance. The I.M.P.A.C. card is easily discernible in its appearance from personal commercial credit cards.

C. Use of the Purchase/Credit Card.

1. The purchase/credit card may be used for simplified acquisitions as defined in FAR Part 13 and for purchases from participating contractors under the applicable GSA contract.

2. Use of the purchase/credit card shall be restricted to Government personnel who have received proper training in the use of the card and who have been delegated purchasing authority (i.e., warranted contracting officers and employees who have received a written DPA from the cognizant COCO or designee). Furthermore, except as authorized by the applicable GSA contract, the only person authorized to use the card is the person whose name appears on the purchase/credit card. Permitting someone else to use an individual cardholder's purchase/credit card, even within the same program office or activity, may result in disciplinary action and/or cancellation of cardholder privileges. Additionally, the purchase/credit card shall not be issued to or used by contractor personnel under any circumstances.

3. Cardholders should always notify the vendor/contractor not to charge the card for the purchases until shipment is made and that purchases are for official U.S. Government purposes and, therefore, are tax exempt.

4. Cardholders shall review all potential acquisitions, including imprest fund transactions, to determine whether the procurement can be accomplished through the use of the GCCCS Program. If the vendor/contractor accepts the purchase/credit card, the purchase shall be made in accordance with these procedures.

D. Limitations of Purchase/Credit Card Use. Limitations for use of the purchase/credit card are as follows:

1. *Prohibited Use of the Purchase/Credit Card.* In addition to the limitations on the use of the GCCCS Program purchase/credit card set forth in the applicable GSA contract, the purchase/credit card shall not be used for the following:

a. Personal purchases or as identification when cashing a personal check; and

b. Open market purchase of items available from GSA FSS mandatory sources.

2. *Regulated Purchases.* Each OA must determine if they will permit use of the purchase/credit card for circumstances which have been designated as regulated purchases in the applicable GSA contract. If regulated purchases are authorized in accordance with OA procedures, the required level of approval within the OA must be specified, and OA procedures must specifically address the situations when the purchase of regulated items are permitted.

3. *GAO Special Interest Items.* GAO decisions surrounding the concept of the "availability of appropriations" are often stated in terms of whether appropriated funds are or are not "legally available" for a given expenditure. Restrictions on the purposes for which appropriated funds may be used come from a variety of sources, including the Constitution, DOT Appropriations Acts, and decisions of the Comptroller General and his predecessor, the Comptroller of the Treasury. OAs are encouraged to review the GAO publication entitled Principles of Federal Appropriations Law and provide coverage of the above areas when developing its Purchase/Credit Card Program procedures. A number of the more

common restrictions which "accounting officers of the Government" have had frequent occasion to consider and apply include:

- a. Payment of attorney's fees;
- b. Purchase of entertainment and recreation;
- c. Payment of personal membership fees; and
- d. Payment of personal expense items such as gifts for employees, entry fees for contests, medals or trophies, and coffee/donuts for conferences or meetings.

E. Fund Control.

1. Each OA shall include in its internal controls the method it will use to control funds within the purchase/credit card program. The internal controls must effectively ensure that funds are not expended in excess of the appropriation.

2. The use of an individual Purchase Request (PR) for each purchase/credit card transaction is optional; however, all purchase transactions made by a cardholder shall be supported by a certification of funds availability and an accountable document (e.g., a sales slip for over-the-counter purchases and a telephone log for telephone purchases).

3. Funds may be controlled in the finance office or by the approving official. The following approaches are provided as suggestions and are not intended to be the only means of funds control to be used in the purchase/credit card program

a. The monthly limit for each approving official may be used by the finance office to commit at the beginning of each monthly card billing cycle. When approving officials forward their monthly statements, the amount of the recorded commitment will be reversed and expenditures will be recorded for the net amount of purchases made for the month.

b. The approving official may exercise fund control by establishing annual, quarterly or monthly commitment accounts for each cardholder under his/her purview, from which the cardholder could draw down when making purchases with the card.

4. Because PRs or other funding documents are not generally distributed to finance offices for obligation purposes under the GCCCS Program, OAs need to pay special attention to end of fiscal year purchases to ensure funds are obligated timely to preclude the loss of funds.

F. Validation of Purchases. Individual cardholders, approving officials and finance offices are responsible for verifying, validating and certifying for payment all authorized card purchases in accordance with paragraph VI. above and OA implementing procedures.

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G. Billing Disputes. Cardholders are responsible for disputing any erroneous charges appearing on the monthly cardholder statement of account. Items returned to vendors and charges by a merchant before the date of shipment are examples of disputable items.

1. Cardholders must send the card issuing bank a completed Cardholder Statement of Questioned Item Form (Attachment 2) for disputed items within seven calendar days after receipt of the monthly statement. This form will be provided by the card issuing bank. A copy of the form must also be provided with the cardholder's statement to the cognizant approving official.

2. An example of an item which cannot be disputed with the card issuing bank is sales tax. Since purchases made with a U.S. Government purchase/credit card are tax free, the cardholder must contact the vendor and request a credit for the amount of sales tax charged, if the disputed charge involves sales tax erroneously charged to the purchase. Cardholders may provide the merchant with the card issuing bank's toll free number on the back of the purchase/credit card, if the merchant questions the sales tax exemption. Currently, all states have submitted letters acknowledging that the Government purchase/credit card qualifies for sales tax exemption.

H. Costs of the Program The card issuing bank, in accordance with the applicable GSA contract, receives payment for providing services from three sources:

1. *Administrative fee.* An administrative fee is charged to OAs electing to receive manual (paper) invoices. The fee percentage is applied to the net amount of card purchases. There is no administrative fee charged to those OAs receiving electronic invoices and remitting payment to the card issuing bank by electronic funds transfer. If electronic invoice and payment procedures are available to the OA, the no-fee option shall be utilized whenever possible.

2. *Late payments.* If an OA makes a late payment to the card issuing bank, interest will be paid for the number of days late, computed at the Renegotiation Board Interest Rate.

3. *VISA Interchange Fees.* The card issuing bank receives payment from VISA for interchange fees, which are paid by vendors which accept Government purchase/credit cards for purchases. The interchange fees compensate the card merchant bank, card issuing bank, and VISA, which comprise the purchase/credit card network.

I. Lost or Stolen Purchase/Credit Cards. The minimum notification requirements are set forth in the applicable GSA contract.

1. Failure to notify the card issuing bank immediately of the loss or theft could result in the OA being liable for subsequent purchases charged to the card.

2. A cardholder who reports more than one incident of loss or theft within a 12-month period will require authorization from the OA Organization Program Coordinator or designee in order to have another card issued.

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J. Refunds. For OAs paying an administrative fee, the card issuing bank will refund a percentage of previously paid fees, once certain purchase thresholds are achieved. These refunds will be credited back to the appropriation charged when the administration fees were originally paid.

K. Purchase/Credit Card Cancellations. The OA Organization Program Coordinator or designee, will generally have the responsibility for cancelling purchase/credit cards due to retirement, resignation, death, or termination of employment in accordance with established OA purchase card/credit card procedures. The procedures should provide for prompt notification of cancellation so that the proper forms may be submitted to the card issuing bank. Other grounds for purchase/credit card cancellation include seriously delinquent debts, travel advances or outstanding Diners Club/American Express charge balances, or using a Government purchase/credit card for personal use.

L. Personal Use. Disciplinary action will be taken against individuals using the Government purchase/credit card for personal use. Disciplinary action can range from a letter in the cardholder's official personnel file to a termination action, based upon the facts involved regarding the documented personal purchases and the OA Purchase/Credit Card Program procedures.

M Liabilities.

1. *Purchase(s) by an unauthorized person*. OAs will not be liable for any use of purchase/credit cards by a person who does not have actual or implied authority to utilize the purchase/credit card, provided that reasonable efforts are made to promptly notify the card issuing bank by telephone and in writing when purchase/credit cards are lost or stolen.

2. *Unauthorized purchases by cardholders*. OAs will be liable for unauthorized purchases made by cardholders, provided that:

- a. The purchase was made through an approved merchant; and
- b. The amount of the purchase did not exceed the cardholder's single purchase or monthly spending limits.

VIII. WRITTEN PROCEDURES, AUDIT AND REVIEW OF PURCHASE/CREDIT CARD TRANSACTIONS.

A. Written procedures developed by the OAs implementing the Purchase/Credit Card Program within their organizations must incorporate tight management controls to preclude abuse and outline courses of action in case abuses occur.

B. DOT is implementing an automated module into the Departmental Accounting and Financial Information System (DAFIS) which will randomly select purchase/credit card transactions for audit. OAs which are converting to or currently use DAFIS will be subject to this random audit of purchase/credit card transactions.

C. Each participating COCO must maintain oversight of the Purchase/Credit Card Program through regularly scheduled and/or randomly scheduled procurement reviews of purchase/credit card transaction logs and documentation. These reviews may be performed in conjunction with regularly scheduled procurement

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management reviews (see TAM 1201.671) or as a separate review function. Some areas to specifically cover include:

1. Adequate funding;
2. Splitting orders;
3. GSA mandatory schedule items purchased on the open market;
4. Small business set aside compliance;
5. Purchase of improper items;
6. Use of purchase/credit cards by other than authorized users; and
7. Informal ratification of unauthorized commitments.

IX. PROMOTING THE USE OF THE GCCCS PROGRAM

Many vendors, particularly small business establishments, are unaware of the advantages of using purchase/credit cards. To better promote acceptance of the card, procurement offices are encouraged to enclose a copy of Attachment 3 with purchase orders and blanket purchase agreements issued to vendors and suppliers that do not currently accept Government purchase/credit cards.

BENEFITS TO YOUR COMPANY
FOR ACCEPTING THE I.M.P.A.C. VISA CARD

TODAY, ROCKY MOUNTAIN BANKCARD SYSTEM, INC. (RMBCS) RANKS AS ONE OF THE LARGEST CARD PROCESSING COMPANIES IN THE UNITED STATES. SINCE RMBCS HAS BEEN RECOGNIZED AS A LEADING PROVIDER OF CARD SERVICE WITH MORE THAN 2-1/2 MILLION CARDHOLDERS USING VISA AND MASTERCARD CREDIT AND DEBIT CARDS, AS WELL AS CARDS FOR PROPRIETARY, PRIVATE LABEL AND AFFINITY GROUPS.

MORE THAN 500 FINANCIAL INSTITUTIONS AND 60,000 MERCHANTS RELY ON RMBCS TO PROCESS 80 MILLION VISA AT MASTERCARD TRANSACTIONS ANNUALLY.



The U.S. Government can now pay vendors with a VISA card for purchases up to \$25,000

GSA Contract Number
GS 005-06010

- Receive payment in days, versus months, for all goods or services purchases.
- Increase sales because government employees are encouraged to make purchases from your company instead of your competitors.
- Reduce paperwork associated with purchases because SF-44 forms and imprest funds are no longer required.

What is required?

John more than 8 million merchant locations worldwide who accept VISA.

Contact your bank or Rocky Mountain BankCard System to establish a merchant relationship. If you already have a VISA merchant account, follow the same procedures as any other VISA sale.

RMBCS
Rocky Mountain BankCard System

ELECTRONIC DRAFT CAPTURE (EDC)

Thousands of companies have switched to this advanced method of credit card processing to streamline operations. Whether you are a small or large company, Rocky Mountain BankCard System has a solution to fit your needs that will be easy to use.

- Deposits are made directly to your local bank within two business days.
- Transactions can be processed via terminal, personal computer or electronic cash register.
- Time consuming phone authorizations and warning bulletins are eliminated.

Establishing a relationship to accept the I.M.P.A.C. card is a simple process.

You can use a PC and modem or purchase an inexpensive terminal to process transactions. A RMBCS merchant representative can help you determine the method of processing that meets your needs.

Operation:

The operation is simple and easy to learn. When you accept a credit card as payment, you simply swipe the card through the magnetic stripe reader on the terminal or key in the I.M.P.A.C. card number. The terminal prompts you to enter the dollar amount of the sale before it dials out for authorization and capture. The authorization number is then recorded on the sales draft.

Reporting:

Rocky Mountain BankCard System provides a Merchant Monthly Activity Statement recapping all account activity for the month.

The discount rate is calculated on net sales for the month. The charge is automatically debited from your bank account between the second and tenth business day of the following month.

Should you be a merchant with multiple locations, etc., additional reporting of each stores activity is available to a main office or corporate headquarters.

Customer Service:

Customer service representatives will be available to answer any questions and to provide you with any information. Additionally, the RMBCS "Help Desk" is available 24 hours a day, 7 day a week. Service levels are monitored and controlled to guarantee that your company receives prompt and responsible service.

If you would like additional information regarding Electronic Draft Capture, please contact our Electronic Draft Capture Marketing Department at 1-800-525-3717, ext. 2526.

Rocky Mountain BankCard System, Inc., P.O. Box 5952, Denver, CO 80217, (303) 629-7755

DEPARTMENT OF TRANSPORTATION PROCEDURES FOR ACQUIRING TRAINING SERVICES

I. GENERAL.

Department of Transportation (DOT) policies and procedures for acquiring training services by other than warranted contracting personnel are set forth herein.

II. DEFINITIONS.

A. "Chief of the Contracting Office (COCO)" means the individual responsible for managing the contracting office(s) within an Operating Administration (OA). The COCO is the official granting a delegation of procurement authority (DPA) under these procedures.

B. "Commercially-available/off-the-shelf," means existing training that is regularly offered to the general public and/or Government personnel in the course of normal business operations. The term includes training offered by a college, university, professional association, group, or organization. The term does not include training specifically developed, designed, or produced to meet a particular DOT requirement.

C. "Delegation of Procurement Authority (DPA)" means the authorizing document, approved and signed by the cognizant COCO or designee granting specific procurement authority to an individual Government employee. If required by the organizational structure of the OA, the COCO or designee shall obtain the approval of the Head of the Contracting Activity prior to granting DPAs under these procedures.

D. "Established catalog or market price" means a catalog, price list, schedule or other verifiable and established record that: (1) is published or otherwise available for customer inspection, (2) states the current or last sales price to the public or private sector (3) is established in the course of ordinary and usual trade between buyers and sellers, and (4) can be substantiated by data from sources independent of the vendor.

E. "Fixed amount" means the cost of the training is of a firm amount (e.g., price per student, event, session, class program, course, seminar, or other instructional service).

F. "Head of the Contracting Activity (HCA)" means the individual responsible for managing the contracting offices within an OA who is a member of the Senior Executive Service or a flag officer.

G. "Simplified acquisition procedure" means the acquisition of training services by the methods prescribed in Federal Acquisition Regulation (FAR) Part 13, and as implemented by the Transportation Acquisition Regulation (TAR) and the Transportation Acquisition Manual (TAM).

H. "Training" as defined in the Government Employees Training Act (GETA), 5 U.S.C. 4101(4), means the process of providing for and making available to an employee, and placing or enrolling the employee in, a planned, prepared, and coordinated program, course (including correspondence), curriculum, subject, system, or routine of instruction of education, in scientific, professional, technical, or mechanical trade, clerical, fiscal, administrative, or other fields, which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals. For the purposes of these procedures, the term includes meetings, seminars, conferences, symposia and associated course training materials (i.e., study plans, workbooks, handbooks, and manuals) furnished with the training. It is not appropriate to use the SF-182 for the sole purpose of acquiring "stand-alone" training supplies.

III. POLICY.

No employee of DOT, other than a contracting officer or a recipient of a Delegation of Procurement Authority (DPA), operating within the limits of his or her authority, may enter into formal contracts, authorize contract modifications or otherwise bind, commit or obligate the Government contractually for training.

DPA recipients are only authorized to procure training under the conditions prescribed in paragraph IV. below. Otherwise, training must be procured by warranted DOT contracting officers.

Training shall be acquired within the limitations and procedures of the GETA, FAR, TAR, TAM and the Departmental Personnel Manual (DPM). If the acquisition is accomplished through the use of the purchase/credit card, the policies and procedures set forth in the DOT Purchase/Credit Card Program (TAM Bulletin TB 94-03) dated March 9, 1994, and OA purchase/credit card procedures shall also be followed.

IV. APPLICABILITY.

The policies and procedures set forth herein apply to the Office of the Inspector General (OIG) and the OAs when:

A. A DPA has been issued to a specific individual authorizing the acquisition of supplies or services in support of the Department of Transportation;

B. The training cost for an individual student or training requirement does not exceed the lesser of:

- a limitation set forth in an individual's DPA; or
- the small purchase limitation established by FAR Part 13;

C. The annual reasonably foreseeable aggregate training cost for a training requirement does not exceed the small purchase limitation (i.e., it would be inappropriate to segregate a known requirement for several courses on a specific subject into an individual requirement by date of offering or other means in

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order to circumvent the small purchase limitation and, therefore, avoid sending the requirement to a contracting office for processing);

D. The training cost is based upon pre-established fixed catalog or market prices;

E. The training is available from a Government source of supply (i.e., General Services Administration, Office of Personnel Management, etc.) OR is commercially available/off-the-shelf or modified commercially available off-the-shelf as set forth in paragraph VI.G. below; and

F. The contracting methods discussed in paragraphs V.C. or VI.C. below are used to acquire training services.

V. ACQUISITIONS WITHIN THE MICRO-PURCHASE THRESHOLD (\$2,500):

The DOT Purchase/Credit Card Program is the preferred method of acquiring all training services in an amount of \$2,500 or less. Every effort shall be made to provide purchase/credit cards to individuals (normally human resources management personnel) who are responsible for acquiring training services of \$2,500 or less in support of their activity.

A. Simplified acquisition training.

Each prospective DPA recipient will be required to attend simplified acquisition training equivalent to the purchase/credit card training conducted by the OA (see Appendix B, Chapter V.C.).

B. Delegation of Procurement Authority (DPA).

1. Appendix B details the process for identifying prospective cardholders and processing card account set-up forms, and the required procurement, finance and property control training. Upon completion of the simplified acquisition training, an individual who has been granted a purchase/credit card DPA and issued a card is authorized to acquire training services within the limits of the DPA, the policies and procedures for the use of the purchase/credit card set forth in Appendix B, and the OA purchase/credit card procedures.

2. Copies of pertinent acquisition regulations referenced in these procedures (including the DOT/OA purchase/credit card procedures), if not received as part of the simplified acquisition training, shall be requested from the cognizant COCO by the Purchase/Credit Card Program approving official when preparing and submitting cardholder account set-up forms.

3. DPA recipients shall be appointed in writing. A memorandum similar to the sample at Attachment 1 shall be used to grant a purchase/credit card DPA. At the discretion of the OA and the cognizant COCO, a purchase/credit card DPA and a DPA for acquiring training services in amount of \$2,500 (micro-purchase threshold) or less can be combined.

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C. Methods of Acquiring Training Services.

1. DOT Purchase/Credit Card Program

The purchase/credit card shall be used to the maximum extent possible to acquire training within the cardholder's single purchase limit (generally not to exceed \$2,500).

2. Use of SF 182.

In the absence of a purchase/credit card or when a contractor does not accept the government purchase/credit card, an SF-182 may be used to acquire training services of \$2,500 or less using the procedures set forth in paragraph VI.C. below. An employee may be designated for a DPA to acquire training services in amount of \$2,500 or less upon attending purchase/credit card training conducted by the OA.

3. Imprest Fund.

For those ~~infrequent~~ occasions when the purchase/credit card or an SF-182 cannot be used, a DPA recipient may use imprest fund procedures to acquire training in accordance with DOT Order 2770.7 series, and DOT Office of Financial Management (M-80) memoranda dated September 19, 1991, and October 21, 1991, (Attachments 2A and 2B). The imprest fund shall be used only for those training needs: in amounts not in excess of the imprest fund limitation; which could not have been anticipated; and which must be satisfied immediately. Justification for use of the imprest fund in lieu of the SF-182 or purchase/credit card must be documented in the official order file (see paragraph VII.D.).

D. Funds Certification.

A Purchase Request (PR) DOT F 4200.1, is not required to acquire training services using a government purchase/credit card. In lieu of a PR, required approvals or funds certification may be secured by any method prescribed by an OA that establishes a record of the action (i.e., by memorandum, routing slip or other written documentation, by annual, quarterly or monthly commitment accounts established by accounting certification officers/funds administrators; by using electronic mail to document approvals and certifications, etc.).

E. Competition.

Purchases within the micro-purchase threshold (\$2,500 or less) may be made without securing competition, if the price is determined fair and reasonable. Requirements in excess of \$2,500 shall not be divided or "split" into two or more separate purchases in order to avoid competition.

VI. ACQUISITIONS GREATER THAN THE MICRO-PURCHASE THRESHOLD (>\$2,500):

A. Simplified acquisition training.

Each prospective DPA recipient will be required to attend formal simplified acquisition training of at least 32 hours duration that, at a minimum,

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addresses the requirements of FAR Part 3, (Improper Business Practices and Personal Conflicts of Interest), FAR Part 8 (Required Sources of Supplies and Services), and FAR Part 13 (Simplified Acquisition and Other Simplified Purchase Procedures). Contracting offices shall assist in identifying qualified simplified acquisition training courses for prospective DPA recipients.

B. Delegation of Procurement Authority.

1. The OIG and each OA shall identify those Government employees (normally human resources management personnel) required to perform training support functions within their activity to be designated as DPA recipients responsible for acquiring training services within the limitations set forth herein. When selecting prospective DPA recipients, consideration shall be given to an individual's experience in obtaining training services, business acumen, judgment, character and demonstrated financial responsibility (e.g., no seriously delinquent debts such as travel advances or charge card balances (American Express)).

2. Upon successful completion of the required simplified acquisition training, the name of the prospective DPA recipient and a copy of the individual's course completion certificate or equivalent documentation shall be submitted to the cognizant COCO, requesting the issuance of a DPA. At the discretion of the COCO, a written DPA will be granted designating the individual as an authorized official for the acquisition of training services within the limitations and procedures of GETA, FAR, TAR, TAM, DPM and the procedures set forth herein.

3. Copies of pertinent acquisition regulations referenced in these procedures, if not received as a part of the simplified acquisition training, shall be requested from the DPA granting official when requesting a DPA. A memorandum similar to the sample at Attachment 3 shall be used to request a DPA to acquiring training services under these procedures.

4. DPA recipients shall be appointed in writing (see Attachment 4). The DPA memorandum shall state the scope of the DPA recipient's authority as limited by these procedures and shall be automatically terminated upon the individual's reassignment or termination of employment. The DPA may also be terminated in writing in the case of unsatisfactory performance or for other reasons as determined necessary by the cognizant COCO. DPAs granted under these procedures may not be redelegated.

5. The COCO shall forward a copy of each DPA granted or terminated under these procedures to the Director, Acquisition and Grant Management, 400 Seventh St., S.W., Washington, DC 20590, Attn: M-61. This notification requirement may be satisfied by submitting a semi-annual list of the DPA recipients' names, addresses, telephone numbers and routing symbols to M-61.

C. Methods of acquiring training services.

1. DOT Purchase/Credit Card Program

The purchase/credit card shall not be used to acquire training services in an amount greater than the micro-purchase threshold of \$2,500 (FAR 13.6).

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Purchases shall not be divided or "split" into two or more acquisitions to avoid the purchase/credit card threshold.

2. Use of SF-182.

For the purposes of these procedures, an SF-182 shall be considered an alternative agency purchase order form ((FAR) 48 CFR 13.505). Attachment 5, SF-182 Supplemental Terms and Conditions, shall be attached to the form before issuing it to a vendor or contractor. When an SF-182 is used to acquire training from a Government source of supply, Attachment 5 is not required.

In accordance with federal statutes and Internal Revenue Service (IRS) regulations, FAR Clause 52.204-3 requires that contractors furnish their Taxpayer Identification Numbers (TIN) to the Government. The contractor may provide the information verbally to the ordering official or in writing when submitting invoices in accordance with the billing instructions contained on the SF-182. If the information is provided orally, the authorized purchasing official (DPA recipient) is responsible for transmitting the TIN to the servicing accounting/financial management office. Accounting/financial management offices are responsible for transmitting the TIN to IRS.

TAR 1213.7101 requires that offerors certify the data submitted with its offer; therefore, TAR 1252.237-71 must be incorporated in full text to request for quotations or solicitation for training services when the content and/or presentations of the training is controlled by DOT (see TAR 1213.7100).

The SF-182 may also be used for requesting, approving and certifying payment for attendance at meetings, conferences, seminars and symposia, the primary purpose of which is to train the individual to meet a job-related need.

D. Funds Certification.

DPA recipients shall obtain the signature of the accounting certification official/funds administrator in the "Agency Use Only" section of the SF-182 as evidence of the availability of funds for obligation under the order. If one of the signatories in Section D, Approvals, is also responsible for funds certification, a second signature need not be obtained. A notation to the effect that "the individual approving in Block #___ is also certifying the availability of funds for this purchase" is acceptable.

E. Competition.

Purchases in excess of the micro-purchase threshold must be acquired through reasonable competitive procedures (generally, soliciting at least three sources) in accordance with FAR 13.106(b). If practicable, two sources not included in the previous competition for similar training services should be requested to furnish quotations. DPA recipients should make every effort to locate new sources and rotate solicitations among sources to the maximum extent practicable. In accordance with FAR 13.106(b)(7), standing price quotations, such as catalog prices, may be substituted for obtaining individual quotations for each purchase.

The DPA recipient may make a determination that only one source is reasonably available as set forth in FAR Part 13.106(c); however, the official order file

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shall be documented to explain the absence of competition. (See sample Sole Source Justification, Attachment 6.)

Competition need not be obtained when acquiring training from a Government source of supply.

F. Posting Notices of Solicitations.

For proposed actions exceeding \$10,000, DPA recipients shall use the information system (electronic bulletin board or other means of displaying notifications) established in their cognizant contracting offices for the purpose of posting notices of solicitations or copies of solicitations in accordance with TAR 1205.101.

G. Modifications.

In the event a change, revision or modification that alters the fixed price of commercially-available/off-the-shelf training is required to meet specific DOT requirements, either prior to or after executing an order for training services, the official order file shall be documented with supplemental information summarizing the changes (i.e., alterations, deletions, expansion, tailoring) required. The official order file shall also include a summary of the price negotiation, including the basis for determining that the price to be paid for modified commercially-available/off-the-shelf training is fair and reasonable in relation to the established catalog or market price. DPA recipients may enlist the assistance of warranted contracting personnel in negotiating price adjustments when faced with changes to fixed-price, commercially available/off-the-shelf training.

Modifications shall be issued using an SF-182 as the obligating document. Additional pages may be attached as deemed necessary to adequately describe the change, revision or modification to the commercially-available/off-the-shelf training.

VII. ACQUISITION PROCEDURES:

Except as otherwise stated, the following requirements are applicable to the acquisition of all training services under these procedures:

A. Advanced Acquisition Planning.

Human resources management personnel are responsible for forecasting, to the best of their ability, the yearly training requirements for their activities. Higher echelon human resources management personnel are responsible for monitoring and identifying predicted annual requirements of subordinate organizations that may be combined for contracting purposes. Yearly requirements in excess of the small purchase limitation per individual student or training requirement must be identified and transmitted to procurement offices sufficiently in advance of the fiscal year in which formal contract award(s) is necessary. Personnel are encouraged to seek guidance concerning procurement leadtimes from their cognizant contracting office in order to allow sufficient time for processing contract award(s).

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While it is recognized that emergency or anticipated training situations may occur, total predictable annual requirements may not be divided or "split" into two or more acquisitions to avoid the competition threshold (\$2,500) and avoid sending requirements to contracting offices. Neither shall predictable annual training requirements be "split" among equivalent training sources (i.e., essentially the same training given under different titles, or by different vendors) to avoid sending the requirements to contracting offices.

B. Small business set asides.

1. Except for training services acquired from a required Government source of supply, all acquisitions estimated to exceed the micro-purchase threshold (\$2,500) shall be reserved exclusive for small business concerns ((FAR) 48 CFR 13.105)). If the purchase is made to other than a small business, the official order file shall be documented with the reason for the unrestricted purchase (see paragraph VII.D.).

2. DPA recipients are encouraged to request assistance from cognizant Small Business Administration (SBA) center representatives and DOT Offices of Small and Disadvantaged Business Utilization (OSDBU) liaison personnel in identifying small business concerns capable of meeting their training requirements. The DOT Headquarters SBA Procurement Center Representative (PCR), can be reached at (202) 366-5323. A national directory of SBA PCRs may be obtained by calling the SBA at (202) 205-6471. A telephone listing of DOT OSDBU liaison personnel for each of the OAs may be obtained by calling their National Information Clearinghouse at (800) 532-1169.

C. Official Order File.

DPA recipients shall establish an official order file in support of the training acquired under these procedures. The file may be organized on an individual basis for each transaction or as a master filing system in which all of the records would be combined in one file, easily accessible for acquisition planning purposes as well as for reviews and audits.

D. Official Order File Documentation. The official order file shall include the following the following documentation as applicable to the purchase:

1. Funds certification. See paragraph V.D. above.

2. Justification for use of imprest fund. See paragraph V.C.3. above.

3. Price reasonableness. In accordance with (FAR) 48 CFR 13.106, the DPA recipient is responsible for documenting the official order file with the basis for determining the price reasonableness of the training to be purchased (i.e., competitive quotations, comparison with competitive published price lists, published market prices, fixed catalog prices).

4. Small business set asides. If a determination is made that there is no reasonable expectation of obtaining quotations from small businesses, as set forth in (FAR) 48 CFR 13.105(c)(2), the DPA recipient shall document the order file with the reason(s) for the unrestricted purchase.

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5. Sole source justification. For requirements in excess of \$2,500, solicitations may only be limited to one source, if it is determined that it is the only source reasonably available ((FAR) 48 CFR 13.106-1(a)(4)), and if the price is determined fair and reasonable. If only one source is solicited, the official order file must be documented to explain the absence of competition.

6. Modifications. The official order file documentation shall include a summary of the price negotiation and determination of price reasonableness as set forth in paragraph VI.G. above.

DPA recipients shall use Form DOT F 4230.1, Simplified Acquisition Summary (Attachment 7) for the purpose of documenting their official order file. The DPA recipient shall sign the Simplified Acquisition Summary form as the approving official. Form DOT F 4230.1 need not be completed when the training is acquired from a Government source of supply.

E. Administration and Close out of Official Order Files.

DPA recipients are responsible for ensuring that:

1. training services are received and/or conducted in accordance with the terms of the order;

2. all necessary information is maintained and reported for all training obtained under these procedures;

3. invoices are reviewed and approved for payment in a timely fashion in order to preclude the payment of interest under the provisions of the Prompt Payment Act (31 U.S.C. 3109 et.seq.); and

4. official order files are not destroyed before three years after final payment.

F. Records.

In addition to the official order file, DPA recipients shall maintain a control log for the purpose of tracking all orders issued under these procedures when the acquisition is accomplished using an SF-182 or the Government purchase/credit card. As a minimum, the control log shall provide the name and address of the vendor, training date(s), title, and total price of the training acquired under these procedures. Any additional information required by human resources development organizations for tracking and reporting purposes must also be maintained.

By October 15 of each year, a copy of the log information for the previous twelve month period shall be provided to the Office of the Secretary, Human Resources Development Division, M-13, and to the DPA granting official to assist in Departmental advanced acquisition planning and maintaining oversight on the appropriate use of the delegated authority.

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G. Except for individuals delegated purchasing authority under the micro-purchase threshold who are not expected to acquire training services in an amount greater than \$20,000 per fiscal year, Government employees serving as procurement officials must sign a Procurement Integrity Certification (see TAM 1203.104-5(d)(2)(ii). Optional Form 333 ((FAR) 48 CFR 53.302-333), Attachment 8, herein may be used for this purpose. The term "procurement official" refers to any officer or employee of an agency who has participated personally and substantially in such duties as drafting reviewing approving a specification or statement of work, preparing or developing procurement requests, preparing or issuing solicitations, evaluating bids or proposals, selecting sources, negotiating prices, terms and conditions of a contract or contract modification, and reviewing and approving contract awards or modifications ((FAR) 48 CFR 3.104-4).

VIII. AUDIT AND REVIEW

The DPA granting official is responsible for reviewing a random sample of the official order files and control logs to ensure that authorized procedures are being followed. The reviews shall be conducted no less frequently than every three years from the implementation date of these procedures. Written documentation of the results of these reviews shall be maintained by the cognizant contracting office and the records shall be made available to reviewing activities (i.e., GAO, OIG, DOT) on an as-required basis.

IX. IMPLEMENTATION.

These procedures may be used immediately, but shall be fully implemented no later than October 25, 1994.

List of Attachments:

Attachment 1	Sample DPA (Purchase/Credit Card)
Attachment 2A & 2B	OST Office of Financial Memoranda of 9/19/91 and 10/21/91
Attachment 3	Sample Request for DPA (Training Services)
Attachment 4	Sample DPA (Training Services)
Attachment 5	SF-182 Supplemental Terms and Conditions--DOT
Attachment 6	Sample Sole Source Justification
Attachment 7	Simplified Acquisition Summary, DOT F 4230.1
Attachment 8	Procurement Integrity Certification

S A M P L E

ACTION: Delegation of Procurement Authority
Number DT ____ *-DPA- ____ **

Chief of the Contracting Office

DPA Recipient (Name, OA, Routing Symbol)

You are hereby delegated the authority to purchase supplies or services and pay for such purchases using the International Merchant Purchase Authority Card (IMPAC), the current name of the Governmentwide Commercial Credit Card Program. No single purchase under this authority may exceed the micro-purchase threshold set forth in FAR 13.601, and is in accordance with further limitations which may be imposed upon you by your Approving Official. Supplies or services may be purchased, consistent with your organizational responsibilities and monthly purchase limits established by the Approving Official designated to review your purchases.

This delegation does not authorize you to purchase supplies or services on the open market that are required to be obtained from mandatory sources of supply (see Federal Acquisition Regulation (FAR), Part 8), nor does it authorize you to procurement supplies or services for which procurement responsibility has been assigned to another organizational element. You are authorized to use the IMPAC for purchases not exceeding the micro-purchase threshold set forth in FAR 13.601, under General Services Administration (GSA) Federal Supply Schedule contracts from contractors who will accept the IMPAC.

All purchases must be made in accordance with applicable laws and regulations including, but not limited to, the FAR, the applicable GSA purchase/credit card contract (currently IMPAC which is the registered trademark of the Rocky Mountain Bankcard system), the DOT Purchase/Credit Card Program (Transportation Acquisition Manual Subchapter 1213.70), and OA purchase/credit card procedures.

This delegation shall automatically terminate upon your separation from the Department or reassignment to another office within the Department.

NOTE: At the discretion of the OA and the cognizant COCO, the purchase/credit card DPA and a DPA to acquire training services (see Attachment 4, which can be modified to indicate a micro-purchase threshold (FAR 13.601)) limitation may be combined into one delegation memorandum

**SF-182 SUPPLEMENTAL TERMS AND CONDITIONS FOR
COMMERCIAL ACQUISITIONS--DOT**

The following provisions/clauses supplement SF-182, Request, Authorization, Agreement and Certification of Training. All the following FAR/TAR clauses apply to this order at the dollar thresholds indicated below:

Required at all dollar levels:

- FAR 52.203-3 Gratuities (APR 84)
- * FAR 52.204-3 Tax Identification Number (TIN) (MAR 94)
TIN: _____ (Offeror provides)
- FAR 52.222-21 Certification of Nonsegregated Facilities (APR 84)
- FAR 52.222-22 Previous Contract and Compliance Reports (APR 84)
- FAR 52.222-26 Equal Opportunity (APR 84)
- FAR 52.227-14 Rights in Data-General, w/Alt. I, II, III (JUN 87)
- FAR 52.232-1 Payments (APR 84)
- FAR 52.232-8 Discounts for Prompt Payment w/Alt. I (APR 89)
- ** FAR 52.232-18 Availability of Funds (APR 84)
- FAR 52.232-25 Prompt Payment (MAR 94)
- FAR 52.233-1 Disputes (MAR 94)
- FAR 52.233-3 Protest After Award (AUG 89)
- FAR 52.236-1 Contractor Inspection Requirements (APR 84)
- FAR 52.243-1 Changes-Fixed Price (AUG 87) w/Alt. II, III
- FAR 52.245-2 Government Property Fixed Price (DEC 89)
- FAR 52.245-4 Government Furnished Property (Short Form) (APR 84)
- FAR 52.249-1 Termination for Convenience of the Government, Fixed Price, Short Form (APR 84)
- FAR 52.249-8 Default Fixed Price (APR 84)
- TAR 1252.212-71 Notice of Delay (APR 84)

Required for actions greater than \$2,500:

- FAR 52.222-36 Affirmative Action for Handicapped Workers (APR 84)

Required for actions greater than \$10,000:

- FAR 52.222-35 Affirmative Action Vietnam Era (APR 84)
- FAR 52.222-37 Employment Report Disabled/Vietnam (JAN 88)

- * Must be incorporated in full text; all other clauses may be incorporated by reference. If the TIN is not provided verbally at the time of award, Clause FAR 52.204-3, shall be completed by the contractor and submitted with the contractor's invoice.
- ** Required if the action will be chargeable to funds of the new fiscal year and the action is to be initiated before the funds are available (see FAR 32.703-2 for limitations on use).

(a) Definitions.

"Common parent," as used in this solicitation provision, means that corporate entity that owns or control an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Corporate status," as used in this solicitation provision, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (e.g., sole proprietorship or partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this solicitation provision means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns.

(b) All offerors are required to submit the information required in paragraph (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the IRS. If the resulting contract is subject to the reporting requirements described in FAR 4.903, the failure of refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) Taxpayer Identification Number (TIN) .

☐ TIN: _____
☐ TIN has been applied for.
☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign Government;

☐ Other. State basis: _____
 _____.

(d) Corporate Status.

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;
☐ Not a corporate entity:

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CHAPTER 1215

CONTRACTING BY NEGOTIATION

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1215.607 Disclosure of mistakes before award.

The authority of the agency head under (FAR) 48 CFR 15.607(c)(3) is delegated to the COCO.

1215.608 Proposal evaluation.

The authority of the agency head under (FAR) 48 CFR 15.608(b) is delegated to the COCO.

1215.612 Formal source selection.

(a) *General.* DOT's formal source selection procedures are contained in Appendix A to this chapter.

(b) *Responsibilities.* The authority of the agency head under (FAR) 48 CFR 15.612(b) has been reserved by the Secretary and assigned within the Office of the Secretary to the Assistant Secretary for Administration. The requirements contained in (FAR) 48 CFR 15.612(b) are addressed in Appendix A to this chapter.

SUBCHAPTER 1215.8 - PRICE NEGOTIATION

1215.800-70 Scope of subchapter.

Whenever agreement on prices is necessary for prime contracts, contract modifications, and any orders under a contract, the requirements of this subchapter apply unless specifically excluded.

1215.801 Definitions.

"Cost realism" means a review of the overall costs in an offeror's proposal to determine if they are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the various elements of the offeror's technical proposal.

"Order," for the purposes of this subchapter, means an action under a contract which requires or directs the contractor to provide supplies or services including, but not limited to: task orders, job orders, and orders under indefinite-delivery contracts, technical directions, letters of technical direction, technical task directives, directives and other similar actions. It does not include technical directions and directives which provide only technical instructions for clarification purposes. These technical instructions shall not change or modify any terms or conditions of the contract, including price, delivery, rights of the parties, or the effort to be performed.

1215.803 General.

(b) The requiring office shall provide an independent Government estimate containing a total estimated cost with each procurement request, except as noted in subparagraph (3) below, when the purchase request is expected to result in an award of a contract; issuance of an order that requires agreement on work to be

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performed, hours, rates, or cost/price; or when there is an increase or decrease in performance which affects the cost or price of the contract.

(1) The independent Government estimate is to be supported by a clear delineation of how the estimate was derived. The major areas of labor (by category), materials, travel, consultant, computer usage, etc. shall be included with the estimate. Any previous cost experience the Government has had in buying the same or similar item(s) shall also be referenced.

(2) The independent nature of this estimate requires the Government to be the final decision authority on the composition of the Government estimate.

(3) Unless the contracting officer requires otherwise, an independent Government estimate is not required for a procurement request that is anticipated to result in:

(i) an award pursuant to the small purchase and other simplified purchase procedures;

(ii) an administrative modification (e.g., incremental funding modification);

(iii) a modification to exercise an option;

(iv) a modification to resolve a cost overrun (i.e., an action under a cost reimbursement contract that exceeds the total estimated amount of the basic contract or option price without changing the performance/technical requirements and pursuant to the clauses at (FAR) 48 CFR 52.232-20, Limitation of Cost, or FAR 52.232-22, Limitation of Funds); and

(v) a procurement of commercial off-the-shelf equipment that may consider, or be based on, established catalog or market prices as defined at (FAR) 48 CFR 15.804-3(c).

(d) Any price, profit or fee demands that the contracting officer considers unreasonable after taking all authorized actions are to be resolved by the COCO. The resolution shall be in writing and made a part of the contract file.

1215.804 Cost or pricing data.

1215.804-6 Submission of data.

(e) When an offeror refuses to provide needed data or take corrective action, the matter shall be referred to the COCO.

1215.805 Proposal analysis.

1215.805-5 Field pricing support.

(a)(1) DOT authorization to not get a field pricing report under the conditions of (FAR) 48 CFR 15.805-5(a)(1) shall be granted by the contracting

officer. Complete written documentation supporting the rationale for not requesting a field pricing report shall be provided in the contract file.

(c) Any field pricing support and/or audit requests are to comply with the requirements of DOT Order 8000.7 series, Audit Services for DOT Contracting Offices.

(d) Contracting officers shall carefully review the proposal to ensure that the required information has been provided by the offeror before forwarding the request to the auditor for an audit review.

1215.807 Prenegotiation objectives.

(a) The contracting officer shall develop prenegotiation objectives for all pricing actions including new contracts, orders, and modification(s) to existing contracts when the total estimated amount (including options) is over the small purchase limitation of FAR Part 13. This requirement does not apply to orders containing items that were fixed-price (such as commercial items) under a basic indefinite-delivery type contract and where negotiation is not needed to issue the order. For the purposes of this section and TAM 1215.808, orders placed on a time and material and labor-hour basis are not considered fixed-price.

(b) OAs shall establish procedures for the review and approval of prenegotiation objectives whether the objectives were derived by price analysis or cost analysis. The document presenting the prenegotiation objectives shall be referred to as the Prenegotiation Memorandum (PM) and shall be signed by the contracting officer, be approved at a level commensurate with the value and complexity of the proposed acquisition, and be in consonance with TAM Subchapter 1204.70.

(c) The content of the PM will vary depending upon the value, complexity, and importance of the pricing action. The following applies to DOT acquisitions:

(1) *Acquisitions over \$100,000.* The format and minimum content requirements for PMs for acquisitions greater than \$100,000 are contained in Appendix B to this chapter. Appendix B provides minimum documentation requirements for price analysis as well as cost analysis (Sections V and VI, respectively). OAs may add to those items listed in the PM but the basic format, by paragraph and subparagraph headings, shall be as shown. This format will produce a logical sequence of discussion and provide for ease of preparation and review.

(2) *Acquisitions of \$100,000 or less.* The minimum content requirements for PMs of \$100,000 or less are contained in Appendix C to this chapter. In lieu of writing a separate PM for acquisitions of \$100,000 or less, the PM may be delayed and completed in combination with the price negotiation memorandum (PNM). However, analyzing the offeror's proposal and establishing a negotiation position shall be accomplished before negotiations commence. The format and minimum content requirements of Appendix C shall be used when combining PMs and PNMs. OAs may add to those items listed in Appendix C, but the basic format, by paragraph headings, shall be followed. Those OAs choosing to write separate memorandums instead of using the combination PM and PNM to write a Pre/Post-

Negotiation Memorandum may develop their own format using the applicable content requirements found in Appendix C.

(d) Support for the Government's prenegotiation objective(s) shall be in writing, be self-sustaining and have substance, rationale, and detail sufficient to explain to a third party how the overall reasonableness of the proposed prices were judged and how the prenegotiation objective represents a fair and reasonable amount.

(e) As noted in (FAR) 48 CFR 15.804-1, the Armed Services Procurement Manual (ASPM) for Contract Pricing (ASPM No. 1) is recommended as a reference when pricing and negotiating.

1215.808 Price negotiation memorandum

(a) The contracting officer shall write a PNM for all acquisitions requiring the development of prenegotiation objectives (see TAM 1215.807(a)). The PNM pulls together the information supporting the prenegotiation objectives of the PM and the results of negotiation.

(1) *Acquisitions over \$100,000.* While the content of a PNM will vary according to the value, complexity, and importance of the pricing action, the format and minimum content requirements for PNMs for acquisitions over \$100,000 (except for those meeting the conditions of subparagraph (d) below) are contained in Appendix D to this chapter. OAs may add to those items listed in the PNM but the basic format, by paragraph and subparagraph headings, shall be followed. To derive a more complete picture of the acquisition, the PNM requires the inclusion of some prenegotiation information and requires the delineation of the differences between the prenegotiation objectives and the negotiated results.

(2) *Acquisitions \$100,000 or less.* For acquisitions of \$100,000 or less, a Pre/Post Negotiation Memorandum may be written in lieu of a separate PM and PNM. See TAM 1215.807(c) above.

(b) OAs shall establish procedures for the review and approval of PNMs. The PNM shall be signed by the contracting officer, approved at a level commensurate with the value and complexity of the proposed acquisition, and be in consonance with TAM Subchapter 1204.70.

(c) A PNM shall be in writing, be self-sustaining and have substance, rationale, and detail sufficient to explain to a third party how the overall reasonableness of the proposed prices were judged and how the negotiated amount is fair and reasonable.

(d) When price analysis is used as the sole basis for evaluating the fair and reasonableness of the total price, and if no changes to the PM have occurred when the final price is determined, a statement, substantially the same as the statement in Attachment 2 to Appendix D of this chapter, shall be included as a separate document in the contract file. The contracting officer shall sign this document, and the document shall be reviewed and approved in accordance with OA procedures, as required in subparagraph (b) above.

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(e) In accordance with DOT Order 8000.1 series, Office of Inspector General Audit and Investigation Report Findings, Recommendations, and Followup Action, the Office of the Inspector General (Attention: JP-10) is to be notified within 60 days following contract award of the actions taken on preaward audits of contracts. This notification, the final action report, shall include a copy of the PNM for the contractor awarded the contract. In addition, the final action report should show the amount of contract cost reduction attributable to the audit report recommendations. Notations should also be made of the preaward audits furnished on unsuccessful offerors so that these reports can be closed out. A copy of the final action report shall also be sent to the Departmental Followup Official (Attention: M-20).

1215.810 Should-cost analysis.

(e) When an OA determines that a should-cost analysis will be conducted, the should-cost analysis team report shall be prepared in accordance with OA procedures.

SUBCHAPTER 1215.9- PROFIT

1215.902 Policy.

(a) As required by (FAR) 48 CFR 15.902, DOT has established a structured approach for determining profit or fee objectives. This approach, referred to as the Weighted Guidelines Method, is based on the profit-analysis factors appearing in (FAR) 48 CFR 15.905.

(1) Exceptions to the use of the Weighted Guidelines Method are found in paragraph (b) below.

(2) Form DOT F 4220.32, Weighted Guidelines Profit/Fee Objective, shall be used to determine profit or fee objectives for conducting negotiations in those acquisitions that require cost analysis and shall be made a part of the PM

(b) The contracting officer may use, in accordance with OA procedures, an alternate structured approach in lieu of the Weighted Guidelines Method, for--

(1) Architect-engineering contracts;

(2) Management contracts for operation and/or maintenance of Government facilities;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee contracts; and

(7) Contracts having unusual pricing situations.

(c) The rationale for profit or fee determined by an alternate structured approach shall be substantiated in a manner similar to that used in the Weighted Guidelines Method.

1215.905 Profit-analysis factors.

(a) The DOT Weighted Guidelines Method provides contracting officers with:

(1) A technique that will insure consideration of the common factors of (FAR) 48 CFR 15.905-1 in establishing a profit/fee objective and the conduct of negotiations; and

(2) A basis for documentation of this objective, including an explanation of any significant departure from it in reaching a final agreement.

(b) Appendix E provides elements which shall be considered when completing the Weighted Guidelines Profit/Fee Objective, Form DOT F 4220.32.

1215.905-2 Additional factors.

Factors with regard to non-profit organizations are contained in DOT's structured approach. Details are provided in Appendix E.

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CHAPTER 1216

TYPES OF CONTRACTS

SUBCHAPTER 1216. 2--FIXED-PRICE CONTRACTS

1216. 206 Fixed-ceiling-price contracts with retroactive price redetermination.

1216. 206-3 Limitations.

(d) The authority of the HCA under (FAR) 48 CFR 16.206-3(d) must be retained at the HCA or higher level.

SUBCHAPTER 1216. 3--COST REIMBURSEMENT CONTRACTS

1216. 306 Cost-plus-fixed-fee contracts.

(c)(2) When making the required determination and findings under (FAR) 48 CFR 16.306, the contracting officer shall use a format substantially the same as the format found in Appendix A to this chapter.

SUBCHAPTER 1216. 5--INDEFINITE-DELIVERY CONTRACTS

1216. 501-2 General.

(b)(2) The procurement request initiator shall prepare a written statement outlining the basis and methodology for determining the estimated quantity under an indefinite-quantity contract and a requirements contract.

1216. 506 Ordering.

(b) See TAM 1232.702-70 for additional requirements pertaining to oral orders.

SUBCHAPTER 1216. 6--TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

1216. 601 Time-and-materials contracts.

(c) *Limitations.* When making the required determination and findings, the contracting officer shall use a format substantially the same as the format found in Appendix B to this chapter.

1216. 602 Labor hour contracts.

When making the required determination and findings, the contracting officer shall use a format substantially the same as the format found in Appendix B to this chapter.

1216.603 Letter contracts.

1216.603-2 Application.

(c) The authority of the HCA under (FAR) 48 CFR 16.603-2(c) is delegated to the COCO. Extensions to the definitization of a letter contract shall be approved by the COCO. See TAM 1243.70 for other requirements applicable to letter contracts as undefinitized contract actions.

1216.603-3 Limitations.

The authority of the HCA under (FAR) 48 CFR 16.603-3 is delegated to the COCO.

(a) Requests for authority to issue a letter contract shall include as a minimum

- (1) the name and address of the proposed contractor;
- (2) the location where the contract is to be performed;
- (3) the contract number, including modification number, if applicable;
- (4) a brief description of the work or services to be performed;
- (5) the amount of the letter contract;
- (6) the performance period or delivery schedule;
- (7) the estimated total amount of the definitive contract;
- (8) the type of definitive contract to be executed (firm-fixed-price, cost-plus-award-fee, etc.);
- (9) a statement that the definitive contract will contain all required clauses or that deviations to the required clauses have been obtained;
- (10) a statement as to the necessity and advantage to the Government of a letter contract and why no other contract type is suitable; and
- (11) a statement as to the competition received pursuant to (FAR) 48 CFR 16.603-3(b).

(b) Profit or fee under letter contracts shall not be paid until after definitization of the letter contract (see (TAR) 48 CFR 1252.216-74).

(c) Letter contracts shall contain the appropriate sections of the uniform contract format as discussed at (FAR) 48 CFR 15.406 as practicable.

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CHAPTER 1217

SPECIAL CONTRACTING METHODS

SUBCHAPTER 1217.1--MULTI-YEAR CONTRACTING

1217.102 Policy.

1217.102-3 Objectives.

(d)(1) *Level unit prices.* The authority of the HCA under (FAR) 48 CFR 17.102-3(d)(1) is delegated to the COCO.

(d)(2) *Cancellation provisions.* The authority of the HCA under (FAR) 48 CFR 17.102-3(d)(2) is delegated to the COCO.

(d)(3) *Recurring costs in cancellation ceiling.* The authority of the agency head under (FAR) 48 CFR 17.102-3(d)(3) is delegated to the HCA.

(d)(4) *Annual and multiyear proposals.* The authority of the HCA under (FAR) 48 CFR 17.102-3(d)(4) is delegated to the COCO.

1217.103 Procedures.

1217.103-4 Award.

(d) The authority of the HCA under (FAR) 48 CFR 17.103-4(d)(2) and (3) is delegated to the COCO.

SUBCHAPTER 1217.4--LEADER COMPANY CONTRACTING

Leader company contracting shall not be used without the written authorization of the SPE.

SUBCHAPTER 1217.5--INTERAGENCY ACQUISITIONS UNDER THE ECONOMY ACT

1217.500 Scope of subchapter.

This subchapter establishes DOT policy and procedures to assure the appropriate and consistent use of interagency acquisitions under the Economy Act (31 U.S.C. 1535) as prescribed by (FAR) 48 CFR 17.5.

1217.501 Definition.

"Interagency Acquisition" means a procedure by which an OA obtains needed supplies or services from or through, another Federal agency, and appropriated funds are obligated.

"Interagency Agreement" means the legal instrument used for an interagency acquisition to exchange funds or property between an OA and another Federal agency. This instrument is used when the OA meets the definition of either the Requesting Agency or the Servicing Agency.

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"Memorandum or Understanding (MDU)" or "Memorandum of Agreement (MDA)" means the legal instrument used when OAs commit to the performance of specified actions with another OA, another Federal agency, or a non-Federal entity and the exchange of funds or property is not involved.

"Military Interdepartmental Procurement Requests (MIPR)" means a type of interagency agreement used to place orders for supplies and non-personal services with a military department.

"Requesting Agency" means the Federal agency which needs the supplies or services, and is obligating the funds to provide for the costs of performance.

"Servicing Agency" means the Federal agency which is providing the supplies, or performing the services, directly or indirectly, and will be receiving the funds to provide for the costs of performance.

1217.502 General.

(a) Policy.

(1) Except as provided in (FAR) 48 CFR 7.3, it is the policy of DOT not to place Federal agencies in direct competition with commercial sources.

(2) It is the policy of DOT to require that interagency agreements are written to assure that the obligation of fiscal year funds is valid, that statutory authority exists to perform the stated requirements, that the stated requirements are consistent with DOT's mission responsibilities, and that each agreement complies with applicable laws and regulations.

(3) *Applicability.* The provisions of this subchapter apply to interagency acquisitions and agreements.

(4) *Exceptions.* The provisions of this subchapter do not apply to:

(i) MDUs and MDAs, as defined in 1217.501 above;

(ii) Supplies and services acquired from or through Government sources, as described in (FAR) 48 CFR Part 8;

(iii) Contracts with the Small Business Administration based upon Section 8(a) of the Small Business Act; and

(iv) Cooperative agreements, as described in DOT Order 4000.8A, Use of Contracts, Grants, and Cooperative Agreements.

(b) Appropriations Principles.

The appropriate use of interagency acquisitions embodies several principles of Federal appropriations law.

(1) In order to record a valid obligation of appropriations, 31 U.S.C. 1501 imposes the requirements that interagency agreements be:

(i) A binding written agreement for specific goods or services to meet an existing bona fide need;

(ii) For a purpose authorized by law; and

(iii) Executed before the expiration of available funds.

(2) The Economy Act (31 U.S.C. 1535) authorizes interagency acquisitions, and provides for payment in advance, as well as reimbursement to the appropriation account to which the performance costs have been charged. The Economy Act further authorizes the servicing agency, as an alternative to fulfilling the requirement through internal resources, to obtain the needed supplies or services by contract. However, an Economy Act acquisition shall not be used to circumvent the competition requirements prescribed in (FAR) 48 CFR Part 6.

(3) An agreement entered into under the Economy Act is recorded as an obligation by the requesting agency the same as a contract. However, under the Economy Act, the obligated appropriations must be deobligated upon their date of "expiration" to the extent that the servicing agency has not incurred obligations through charged costs or under a contract. This deobligation requirement is applicable to annual and multiple-year appropriations; it is not applicable to no-year appropriations. MPRs are viewed as authorized by the Economy Act.

(4) Where an interagency acquisition is based upon some statutory authority other than the Economy Act:

(i) The advance payment provision of the Economy Act does not apply. The statute cited as the authority for the agreement must also specifically permit an advance payment; otherwise, payment must be on a reimbursement basis.

(ii) The provision of the Economy Act which permits the servicing agency to obtain the needed supplies or services by contract does not apply. The statute cited as the authority for the agreement must also not specifically prohibit the servicing agency from fulfilling the requirement by contract. If such a prohibition exists, the servicing agency may only use internal resources to fulfill the requirement.

(iii) The deobligation required by the Economy Act does not apply. In this situation, the obligation will remain available for payment, regardless of when performance occurs, in the same manner as a contract obligation.

(5) Within DOT, the OAs have a number of statutory authorities available for entering into interagency agreements. Each OA shall be responsible for determining those authorities, as well as constraints applicable to the use of advance payments and contractors.

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I 1217.503 Determinations and findings requirements.

(a) *Applicability.* Prior to the execution of an interagency agreement under the Economy Act, the CO shall sign the determination required in (FAR) 48 CFR 17.503.

(b) *Exceptions.* Such determination is not required for interagency agreements entered into under authorities other than the Economy Act.

(c) *Determination contents.* The determination shall be prepared in substantially the same format as shown in Appendix A and shall contain the following:

(1) An explanation as to why obtaining the supplies or services through another Federal agency is more economical or more convenient than by direct contract with a commercial concern; and

(2) As appropriate, the findings required by (FAR) 48 CFR 17.503.

1217.504 Ordering procedures.

(a) Requests for the processing of interagency agreements shall be submitted on Form DOT F 4200.1, Procurement Request, to the procurement office serving the requiring office.

(b) The Procurement Request (PR) shall state whether the work is to be performed by an OA, a Federal agency other than DOT, or through one of these entities by a contractor.

(c) Where the Economy Act is to be used as the authority for an interagency acquisition, the requiring office shall include with the PR documentation of the elements considered which support the conclusion that it is more economical to obtain the required supplies or services through the proposed interagency agreement, rather than by direct contract with a commercial concern. Current market prices or recent procurement prices may be used in this process.

(d) Orders placed under interagency agreements may take any form which is legally sufficient and reflects the agreement of the parties. The format shown in Appendix B is recommended for use by OAs when they are the requesting agency. (Other servicing agencies may have their own formats for interagency agreements.)

(e) The CO shall assure compliance with the ordering procedures and payment provisions prescribed in (FAR) 48 CFR 17.504 and 17.505, and should require inclusion of the following additional provisions in all interagency agreements and/or orders placed against them

(1) Legislative authority;

(2) Period of performance;

(3) Dollar amount of agreement;

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CHAPTER 1219

SMALL BUSINESS PROGRAM

SUBCHAPTER 1219.1--SIZE STANDARDS

1219.102 Size standards.

Appendix A is the U.S. Small Business Administration's "Guidelines for Determining the Appropriate SIC Code for 8(a) Requirement Offerings".

SUBCHAPTER 1219.2--POLICIES

1219.201 General policy.

(b) The small, small disadvantaged, and women-owned small business goals shall be developed, as set forth in Appendix B, in collaboration with the COCO, program officials, and the OAs Small Business Specialist. The goals shall take into account both past performance relative to such goals and the number, type, and dollar value of acquisitions projected for the ensuing fiscal year.

(c)(2) The authority of the agency head under (FAR) 48 CFR 19.201(c)(2) is nondelegable.

(c)(7) The authority of the Director, Office of Small and Disadvantaged Business Utilization (S-40), OST under (FAR) 48 CFR 19.201(c)(7) is delegated to the HCA. A copy of the written assignment of the Small Business Technical Advisor (see TAM 1219.201(d)) shall be sent to S-40.

(c)(9) The OA small business specialist (see TAM 1219.201(d)) acting on behalf of the Office of Small and Disadvantaged Business Utilization (S-40) should review each procurement request over the simplified acquisition threshold to comply with the requirements of (FAR) 48 CFR 19.201(c)(9).

(d) Within DOT, the small business technical advisor is synonymous with the small business specialist (formerly known as the small and disadvantaged business utilization specialist or the small business liaison officer). The small business specialist shall:

(1) Maintain a program designed to locate capable small, small disadvantaged and women-owned small business concerns for current and future acquisitions;

(2) Coordinate inquiries and requests for advice from small, small disadvantaged and women-owned small business concerns on acquisition matters;

(3) Review procurement requests which do not meet the requirements of (FAR) 48 CFR 13.105(a) (see (FAR) 48 CFR Part 13 to): (A) assure that all small business concerns will be afforded an equitable opportunity to compete; (B) initiate recommendations for small business set-asides (individual and class);

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- I (C) identify requirements for the 8(a) program; and (D) identify the possible breakout of items or services suitable for acquisition from small, small disadvantaged and women-owned small business concerns;

(4) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in an acquisition. When the small business concerns cannot be given an opportunity on a current acquisition, initiate action, in writing, with appropriate technical and contracting personnel to ensure that necessary specifications and/or drawings for future acquisitions are available;

(5) Advise small businesses with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(6) Participate in the evaluation of prime contractor's small business subcontracting programs;

(7) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in acquisition programs;

(8) Make available to SBA copies of solicitations when requested;

(9) Act as liaison with the appropriate SBA office or representative in connection with set-asides, certificates of competency, size classification, and any other matter concerning the small and small disadvantaged business programs; and

(10) Participate in Business Opportunity/Federal Procurement Conferences and other Government-industry conferences and meetings, as required.

1219-201-90 Procurement Center Representative (PCR).

(a) The Small Business Administration has a PCR located at the following DOT contracting activities:

- (1) Coast Guard Academy, New London, CT;
- (2) Coast Guard Civil Engineering Unit, Juneau, AK;
- (3) Coast Guard Facilities Design and Construction Center, (Pacific), Seattle, WA;
- (4) Federal Aviation Administration, Des Plaines, IL;
- (5) Federal Aviation Administration, Oklahoma City, OK;
- (6) Federal Aviation Administration, Atlantic City, NJ;
- (7) Federal Aviation Administration, Fort Worth, TX;
- (8) Federal Aviation Administration, Burlington, MA;
- (9) Federal Highway Administration, Denver, CO; and
- (10) Volpe National Transportation Systems Center, Cambridge, MA.

(b) A SBA-PCR is located in the Office of Small and Disadvantaged Business Utilization (S-40). This individual serves as the PCR for each contracting activity located at or assigned to the OA Headquarters in the Washington, DC-Metropolitan Area.

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1219.202 Specific policies.

1219.202-2 Locating small business concerns.

(b) The Department's Office of Small and Disadvantaged Business Utilization (OSDBU), disseminates notices of proposed acquisitions to the small, small and disadvantaged, and women owned business community through a National Information Clearinghouse. In order for the Clearinghouse to function, the person responsible for transmission of the synopsis to the CBD shall also furnish a copy of the synopsis to OSDBU. The copy should be sent at the same time the notice is sent to the CBD. The synopsis is to be sent to OSDBU, by one of three methods, which are listed in descending order of preference:

- (1) **FAX** FTS (202) 366-7538.
- (2) **Floppy Disc:** Office of Small and Disadvantaged Business Utilization, S-40
National Information Clearinghouse
400 7th St., S.W.
Washington, DC 20590

(use ASCII standard format; Word Perfect - use DOS format)
(For questions, please call (202) 366-5335).
- (3) **Hard Copy:** Same address as for floppy disc.

1219.202-5 Data collection and reporting requirements.

(b) In addition, the Major Procurement Preference Program Goals Monthly Reporting Form shall be submitted monthly to the Director, OSDBU, in accordance with OA procedures.

SUBCHAPTER 1219.4--COOPERATION WITH THE SMALL BUSINESS ADMINISTRATION

1219.402 Small Business Administration procurement center representatives.

(c) Appendix E, U. S. Small Business Administration "Duties of the Small Business Administration Procurement Center Representative", expands the list of duties in (FAR) 48 CFR 1219.402.

SUBCHAPTER 1219.5--SET-ASIDES FOR SMALL BUSINESS

1219.501 General.

(a) Appendix F, "Governmentwide Small Business and Small Disadvantaged Business Goals for Procurement Contracts" establishes a 20 percent goal for small businesses and a 5 percent goal for small disadvantaged business concerns.

- I (c) The small business specialist shall initiate recommendations to the contracting officer for small business set-asides with respect to individual acquisitions or classes of acquisitions or portions thereof.

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1219.502 Setting aside acquisitions.

1219.502-3 Partial set-asides.

The authority of the HCA under (FAR) 48 CFR 19.502-3(a)(5) is delegated to the COCO.

1219.505 Rejecting Small Business Administration recommendations.

(b) The authority of the HCA under (FAR) 48 CFR 19.505(b) is delegated to the COCO.

(c) The authority of the agency head under (FAR) 48 CFR 19.505(c) is delegated to the HCA. The authority of the HCA under (FAR) 48 CFR 19.505(c) is delegated to the COCO.

(d) The authority of the agency head under (FAR) 48 CFR 19.505(d) has been delegated to the HCA. The authority of the HCA is delegated to the COCO.

(e) The authority of the agency head under (FAR) 48 CFR 19.505(e) is delegated to the HCA.

1219.506 Withdrawing or modifying set-asides.

(b) The COCO shall be responsible for resolution of disagreements between the contracting officer and the OAs Small Business Specialist.

SUBCHAPTER 1219.6--CERTIFICATES OF COMPETENCY AND DETERMINATIONS OF ELIGIBILITY

1219.602 Procedures.

1219.602-1 Referral.

A copy of the documentation supporting the determination that a small business concern is not responsible, as required by (FAR) 48 CFR 19.602-1(a), shall be transmitted to the Director, OSDDBU, concurrently with the submission of a copy of the documentation to the appropriate SBA Regional Office.

SUBCHAPTER 1219.7--SUBCONTRACTING WITH SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS AND WOMEN-OWNED SMALL BUSINESS CONCERNS

1219.704 Subcontracting plan requirements.

1219.704-70 Reporting requirements.

If a contract does NOT contain the clause at (FAR) 48 CFR 1252.219.70, the contracting officer must forward the SF-295 to the Office of Small and Disadvantaged Business Utilization (S-40), OST, upon receipt of the form from the contractor. If the contract does contain the clause, the clause requires the contractor to forward the SF-295 directly to S-40.

1219.705 Responsibilities of the contracting officer under the subcontracting assistance program

1219.705-2 Determining the need for a subcontracting plan.

A copy of the determination that there are no subcontracting opportunities (see (FAR) 48 CFR 19.705-2(c)) shall be provided to the Director, OSDDBU.

1219.705-6 Postaward responsibilities of the contracting officer.

A copy of the approved small business subcontracting plan shall be provided to the Director, OSDDBU.

SUBCHAPTER 1219.8--CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

1219.803 Selecting acquisitions for the 8(a) Program

(c) The cognizant technical office may, and is encouraged to, discuss contracting opportunities with potential 8(a) contractors prior to initiation of a PR. (See TAM 1232.702-70 for documentation requirements). In order to specify an individual firm for award, however, the cognizant technical office must provide to the contracting officer, a written justification with the PR. The justification must include a statement that the firm has demonstrated the ability to fulfill the proposed acquisition, document the technical capability, experience, organizational structure, availability of any required equipment or facility, and any other predominant capability which demonstrates the firm's ability to perform the proposed acquisition. The justification must state why the firm was selected in preference to other 8(a) firms.

1219.804 Evaluation, offering, and acceptance.

1219.804-4 Repetitive acquisitions.

Any requirement which has previously been procured through the 8(a) Program, but which is now being proposed for reprocurement outside of the 8(a) Program must be approved by the Director, OSDDBU, in accordance with OA procedures. The clearance shall be obtained prior to any public notice or solicitation of the requirement.

1219.805 Competitive 8(a).

1219.805-2 Procedures.

Appendix C is the U.S. Small Business Administration's "Guidelines for 8(a) Competition".

1219.810 SBA appeals.

The authority of the agency head under (FAR) 48 CFR 19.810(a), (b), and (c) is delegated to the COCO.

1219.812 Contract administration.

The authority of the agency head under (FAR) 48 CFR 19.812(d) is delegated to the COCO.

SUBCHAPTER 1219. 70--SMALL BUSINESS INNOVATION RESEARCH PROGRAM

1219.7001 Small Business Innovation Research (SBIR) Program

(a) The Small Business Innovation Development Act of 1982 (Pub. L. 97-219) and reauthorizing legislation (Pub. L. 99-443) and the Small Business Research and Development Act of 1992 (Pub. L. 102-564) seek to encourage the initiative of the private sector and to use small businesses as effectively as possible in meeting Federal research and development objectives. Each agency is required to set aside a percentage of their budget for a Small Business Innovation Research Program (SBIR). To comply with obligations of the Act, DOT established a Small Business Innovation Research Program which conforms to these public laws and to guidelines and regulations of the Small Business Administration. By memorandum dated November 5, 1992, the Secretary delegated to the DOT Transportation System Center, the overall responsibility for coordinating and implementing the DOT SBIR.

(b) Annually, DOT solicits from small businesses, innovative research proposals that address high priority requirements of the DOT and have potential for commercialization. The DOT SBIR Program is a three-phase process:

(1) Phase I is the conduct of feasibility-related experimental or theoretical research or Research and Development (R&D) efforts on specified research topics. The dollar value of the proposal should not exceed \$75,000 and the period of performance may be up to six months. The primary basis for award will be the scientific and technical merit of the proposal and its relevance to DOT requirements. Only awardees in Phase I are eligible to participate in Phase II.

(2) Phase II is the principal research or R&D effort having a period of performance of approximately two years with a dollar value of up to \$500,000. Phase II proposals under the SBIR Program are accepted only from firms which have previously received a DOT Phase I award. Awards would be based upon the results achieved in Phase I, the technical merit of the Phase II proposals, potential for commercialization and commitment for follow-on funding from non-federal sources for Phase III.

(3) Phase III is to be conducted by the small business with nonFederal funds to pursue commercial applications of the research or R&D funded in Phases I and II by DOT. Phase III may also involve follow-on non-SBIR funded contracts with components of DOT for products or processes for use by the Government.

1219.7002 Eligibility requirements.

To be eligible under the DOT SBIR Program, the firm must qualify as a small business for research or R&D purposes; the primary employment of the principal

investigator must be with the proposing firm at the time of award and during the proposed research effort; and, the research or R&D work must be performed in the United States, including its territories and possessions. Questions regarding the DOT SBIR Program should be addressed to the following:

DOT/SBIR Program Office, DTS-22
U.S. Department of Transportation
Research & Special Programs Administration
Volpe National Transportation Systems Center
55 Broadway, Kendall Square
Cambridge, Massachusetts 02142-1093
ATTN: DOT SBIR Program Director
Telephone: (617) 494-2051 FAX: (617) 494-2497

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TRANSPORTATION ACQUISITION MANUAL

CHAPTER 1220

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- Appendix E DOL goals and timetables for minority and female utilization on construction contracts in geographical areas.

(2) For a request for exemption under (FAR) 48 CFR 22.807(a)(2), the authority of the agency head is delegated to the SPE; and

(3) For a request for exemption under (FAR) 48 CFR 22.807(b)(5), the authority of the agency head is delegated to the HCA.

SUBCHAPTER 1222.10--SERVICE CONTRACT ACT OF 1965, AS AMENDED

1222.1003 Applicability.

1222.1003-4 Administrative limitations, variations, tolerances, and exemptions.

(a) When requests for limitations, variances, tolerances, and exemptions, as permitted by (FAR) 48 CFR Subpart 22.10, from the Service Contract Act are necessary, contracting officers shall submit, via the OA labor advisor (if any) the requests to the Wage and Hour Administrator. Also, see TAM 1222.1021 for additional procedures concerning rate variances.

1222.1003-7 Questions concerning applicability of the Act.

Contracting officers may request written or oral advice from the OA labor advisor or the DOT labor coordinator; however, requests to the Administrator, Wage and Hour Division, shall be in writing.

1222.1008 Procedures for preparing and submitting Notice (SF 98/98a).

1222.1008-2 Preparation of SF 98a.

The Wage and Hour Division's "Service Contract Act Directory of Occupations" may be available through the Government Printing Office (GPO) rider requisitioning process; therefore, contracting officers shall consult with the GPO or the OA directives coordinator prior to placing a direct purchase order for the Directory with GPO.

1222.1008-7 Required time of submission of Notice.

(d) The contracting officer may make direct written or oral contact with the Wage and Hour Division concerning emergencies that will require an immediate wage determination. However, if the OA has a focal point which processes Department of Labor (DOL) issues, the written or oral request to DOL shall be coordinated with that individual or office.

1222.1011 Response to Notice by Department of Labor.

1222.1011-2 Requests for status or expediting of response.

Except when there is an OA representative to handle DOL issues, the contracting officer may make direct oral or written contact with the Wage and Hour Division concerning the status or the expediting of wage determinations.

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1222.1013 Review of wage determination.

Contracting officers shall contact (orally or in writing) the OA's labor advisor or if none, the DOT labor coordinator for advice when the conditions under (FAR) 48 CFR 22.1013(a) or (b) exist.

1222.1014 Delay of acquisition dates over 60 days.

The contracting officer's inquiry to the Wage and Hour Division as required by (FAR) 48 CFR 22.1014 shall be in writing. A copy of the applicable wage determination shall be attached to the request to facilitate a prompt review and response by DOL. A telephone inquiry should be made if a response to the written inquiry is not received within a reasonable time.

I 1222.1021 Request for hearing.

1222.1021-70 Additional hearings data.

(a) In addition to the requirements of (FAR) 48 CFR 22.1021(a), the request for a variance hearing must include copies of the relevant wage determination, if issued, collective bargaining agreement, and the SF 98 and 98a that requested the wage determination in question. Also, a statement of the case setting forth, in detail, the reasons why it is believed that a substantial variance exists with respect to some or all of the wages and/or fringe benefits, attaching available data concerning wages and/or fringe benefits prevailing in the locality. The statement shall contain an analysis concerning the differences between the collectively bargained rates issued and the rates contained in the following:

(1) Corresponding Federal wage board rates and surveys (while it is not necessary that the challenged rate be higher than the corresponding Federal rate, this is an important factor);

(2) Relevant Bureau of Labor Statistics survey data and the comparable Service Contract Act wage determination;

(3) Other wage data (e.g., rates paid in local hospitals would be appropriate for comparison on contracts for hospital antiseptic services, while rates paid in local schools could be of value in comparison for janitorial or food service workers); and

(4) Other collectively-bargained wages and benefits.

(b) If the contracting officer cannot provide all of the information required in paragraph (a) above with the request for a hearing, the approximate time needed to obtain the data or to develop the information must be provided. The request must clearly demonstrate the efforts being made to obtain or develop the information. A statement that data are not available will not be accepted by DOL.

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CHAPTER 1223

ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

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(2) In preparing solicitations and evaluating and selecting offers for award, contracting personnel shall consider the life cycle cost data along with other relevant evaluation criteria. If life cycle costing is not used, the contract file shall be documented to reflect the rationale for not obtaining and evaluating the data.

(f) E.O. 12844, Federal Use of Alternative Fueled Vehicles, dated April 21, 1993, requires agencies to acquire alternative fueled vehicles in excess of the goals previously established by the Energy Policy Act of 1992.

(g) E.O. 12845, Requiring Agencies to Purchase Energy Efficient Computer Equipment, April 21, 1993, requires, within 180 days from the date of the Order, that all microcomputers, including personal computers, monitors, and printers acquired by agencies shall be equipped with the energy efficient low-power standby feature as defined by the "EPA Energy Star" computers program. EPA Energy Star information may be obtained by calling (202)-233-9114 (see FIRM Bulletin C-35, Energy-efficient microcomputers and associated computer equipment).

(h) E.O. 12843, Procurement Requirements and Policies for Federal Agencies for Ozone Depletion Substances, dated May 13, 1993, provides specific policies that agencies must follow in reducing the use and procurement of ozone depleting substances.

SUBCHAPTER 1223.4 -- USE OF RECOVERED MATERIALS

1223.400 Scope of Subpart.

(a) The DOT Affirmative Procurement Program (APP) for Products Containing Recovered Materials required by the Resource Conservation Act of 1976 (RCRA), as amended and Executive Order 12873, is set forth in Appendix A. The purpose of the DOT APP is to foster markets for recovered materials by maximizing the Federal Government's recycled products purchases. A secondary objective is to reduce the amount of solid waste requiring disposal through the purchase and use of products containing recovered materials.

1223.401 Authorities.

(a) OFPP Policy Letter 92-4, dated 11/2/92, establishes Executive branch policies for the acquisition and use of environmentally-sound, energy efficient products and services and provides guidance for agencies to implement Section 6002 of RCRA (Attachment 1 to Appendix A). OFPP Policy Letter 92-4 contains references to Executive Order 12780 which has been revoked by Executive Order 12873. However, the guidance provided by the Policy Letter is still in effect.

(c) Executive Order 12873 (Section 103 and Part 3) also requires the Presidential appointment of a Federal Environmental Executive (located in EPA) and the head of each Executive department agency designation of an Agency Environmental Executive. At DOT, the Assistant Secretary for Administration, M-1, has been designated these authorities and responsibilities.

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(d) See FAR 23.702 for additional statutes and Federal directives applicable to the acquisition of environmentally preferable and energy-efficient products and services.

1223.402 Definitions.

See Attachment 2 to Appendix A for supplemental FAR definitions.

1223.403 Policy.

DOT has adopted the Environmental Protection Agency (EPA) guideline recommendations in implementing its APP for recovered materials. Program officials and contracting officers shall use product descriptions and prepare contract specifications reflecting cost-effective procurement and use of designated recycled products, encouraging bidders to supply products containing recycled materials. A program office initiating an acquisition has the responsibility for determining:

(1) Whether recovered materials should be included in the specifications for designated items; and

(2) Whether the statement of work and/or specification involve(s) the use of items subject to the DOT APP (Appendix A).

When purchasing EPA designated items, contracting officers shall purchase, to the maximum extent practicable, items composed of recovered material consistent with the specifications for EPA designated items as set forth in the DOT APP.

1223.404 Procedures.

(a) Applicability. Refer to (Attachment 3 to Appendix A) for any questions concerning the applicability of the APP to Federal, State or local agencies, and government contractors and private party recipients of Federal loans, grants, or funds.

The \$10,000 threshold applies to DOT-wide procurements and does not represent the purchase of any single OA. Accordingly, when submitting annual reports (Attachment 4 to Appendix A) under RCRA, OAs shall report all purchases of items covered under the DOT APP. Individual OA statistics will be combined into one DOT response to the Office of the Federal Environmental Executive, the Office of Federal Procurement Policy and the Environmental Protection Agency as required.

(b) EPA designated items. As mandated by RCRA Sec. 6002(e), EPA has developed and issued procurement guidelines for use by procuring agencies. The guidelines designate specific items containing recovered materials procuring agencies must purchase to the maximum extent practicable.

The DOT APP is based upon the minimum recovered material content standards developed by EPA which are set in such a way as to assure that the recovered materials content (and in the case of paper, the highest percentage of

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postconsumer recovered materials) is the maximum practicable without jeopardizing the intended use of the item, consistent with Federal procurement law. See Section II of Appendix A for a listing of EPA designated items and Attachment 5 to Appendix A for the minimum recovered material content standards for these items.

For technical information regarding RCRA or the EPA designated items, contact the RCRA Hotline at (800) 424-9346, or in the Washington, DC metropolitan area, (703) 412-9810.

(3) Program offices may request and contracting activities may purchase EPA designated items containing other than recovered materials as set forth in the DOT APP only if one of the conditions set forth in FAR 23.404(b)(3) applies. The program office is responsible for completing and forwarding the Recovered Materials Determination Form (Attachment 6 to Appendix A) or a form substantially the same as Attachment 6 when submitting a purchase to acquire EPA designated items from other than Federal supply sources and the Request for Waiver (Attachment 7 Appendix A) when submitting a purchase request to acquire EPA designated items containing other than recovered materials. Both forms must be signed by the cognizant program official and maintained in the procurement file.

(c) Agency designated items. At the discretion of the OA, items other than EPA designated items for which recovered material content shall be specified may be adopted.

SUBCHAPTER 1223.5- -DRUG-FREE WORKPLACE

1223.501 Applicability.

(d) The authority of the agency head under (FAR) 48 CFR 23.501(d) is delegated to the HOA.

1223.505 Solicitation provision and contract clause.

(c)(2) The authority of the agency head under (FAR) 48 CFR 23.505(c)(2) is delegated to the HOA.

1223.506 Suspension of payments, termination of contract, and debarment and suspension actions.

(e) The authority of the agency head under (FAR) 48 CFR 23.506(e) is nondelegable.

**DEPARTMENT OF TRANSPORTATION AFFIRMATIVE
PROCUREMENT PROGRAM FOR RECOVERED MATERIALS**

I. General Policy. DOT has adopted the Environmental Protection Agency (EPA) minimum content standards in implementing this affirmative procurement program (APP) for recovered materials. These minimum content standards specify the minimum recovered materials content an item must contain to be considered for an award. The EPA recommended minimum content standards are set forth in the Recovered Materials Advisory Notice published in the Federal Register, Vol 60, on May 1, 1995 (see Attachment 5).

It is the policy of DOT to acquire designated items with recovered materials to the greatest extent practicable, to promote cost effective waste reduction and recycling of reusable materials from wastes generated by Federal activities, and to encourage economically efficient market demand for designated items produced using recovered materials by direct the immediate implementation of cost effective procurement preference program favoring the purchase of such items.

II. Affirmative Procurement Preference Program

A. EPA Designated Items. At present, there are 23 EPA designated items included in the DOT APP as listed below. In addition, see Section II.B. for the procurement preference for recycled toner cartridges.

- Paper and Paper Products
- Engine Coolants
- Re-refined Lubricating Oils
- *Retread Tires
- Structural Fiberboard
- Laminated Paperboard
- Carpet
- Floor Tiles
- Patio Tiles
- Building Insulation Products
- Cement and Concrete Containing Coal Fly Ash
- Ground Granulated Blast Furnace Slag
- Traffic Cones
- Traffic Barricades
- Playground Surfaces
- Running Tracks
- Hydraulic Mulch
- Yard Trimmings Compost
- Office Recycling Containers
- Office Waste Receptacles

*This APP does not apply to the purchase of original equipment tires. The only Federal regulation prohibiting the use of retread tires is on the front wheels of buses (DOT, Federal Motor Carrier Safety Regulations, Title 49, Section 393.75(d)).

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- Plastic Desktop Accessories
- Binders
- Plastic Trash Bags

B. Special Procurement Preference for Recycled Toner Cartridges. Toner cartridges have not been identified as an EPA designated item. However, Section 6002 of RCRA was amended (Public Law 103-123, Section 401) to enable Federal agencies to establish a preference for remanufactured or recycled toner cartridges. When purchasing toner cartridges for use in laser printers, photocopiers, facsimile machines, or micrographic printers, contracting officer may give preference of re-manufactured toner cartridges unless it is determined in writing: (1) adequate market research establishes remanufactured or recycled cartridges for the type of equipment used by the organization do not exist; (2) the price or life-cycle cost offered for the cartridge is higher than the original equipment manufacturer's new cartridge; or (3) remanufactured or recycled cartridges are not available in quantities needed within the time frames required.

Nothing in this requirement shall prohibit the purchase of one newly manufactured cartridge (or a number equal to those normally supplied at the time of initial purchase) as part of the initial printer or copier acquisition. These provisions shall not affect current law with respect to Organizations for Blind or Other Severely Handicapped.

C. Future EPA Designated Items. This APP will be modified, as necessary, to incorporate future EPA designated items and minimum content standards.

D. Recovered Materials Determination Form In making the determinations required in TAM 1223.404(3), program offices shall use the format or substantially the same format as shown in Attachment 6. In developing plans, drawings, work statements, specifications, or other product descriptions, program offices shall consider the following factors: elimination of virgin material requirements, use of recovered materials, reuse of products, life-cycle cost, recyclability, use of environmentally preferable products, waste prevention (including toxicity reduction or elimination), and ultimate disposal, as appropriate. These factors should be used in acquisition planning for all procurements and in the evaluation and award of contracts (i.e., the bidder most able to cost-effectively satisfy the recovered material content specifications as well as the performance/design specifications outlined in the solicitation document).

E. Request for Waiver. To request a waiver from the purchase of EPA designated items containing other than recovered materials, program offices and contracting officers shall use the format or substantially the same format as shown in Attachment 7.

F. Federal Sources of Recycled and Environmental Products. Thousands of recycled and environmental products are available to procuring agencies through established Federal supply sources, and new items are continuously being added. Federal sources of EPA-designated items, and other recycled and environmental

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products include the General Services Administration (GSA) Federal Supply Service (FSS), Government Printing Office (GPO) and the Defense General Supply Center (DGSC). See Attachment 8 for a listing of several GSA FSS publications to assist in identifying and requisitioning recycled and environmental products.

G. Other Recycled and Environmentally Preferable Products. EPA's guidelines may not reflect those procured products or services most often used by DOT. Procurement originators are encouraged to request, procure, and use other products containing recovered materials in addition to those specified in this APP.

H. Life-Cycle Cost Analysis. OFPP Policy Letter 92-4 (Attachment 1) required Federal agencies to use life-cycle cost analysis, wherever feasible and appropriate, to assist in selecting products and services. At this time, life-cycle cost information for EPA designated items is not available. Until such information is developed and issued, OAs shall rely on minimum content standards of preference standards in EPA's guidelines (Attachment 5).

III. Recovered Materials Promotion Program

A. The DOT preference for recovered materials shall be incorporated into all applicable solicitations. This shall be accomplished by including explicit recovered material preference standards for EPA-designated items in appropriate solicitations for bids, statements of work, and during contract negotiations.

B. Each DOT procuring activity shall promote the DOT APP within its operation. The promotional program shall include at least the following:

(1) Procuring activities shall include in their CBD announcements a statement of the recycling and recovery requirements of the solicitation, if applicable;

(2) Contracting officers should seek from the marketplace and annotate their sources/bidders lists with information on vendors offering recovered products and services;

(3) Contracting officers should encourage each contractor under a value engineering program to look for savings opportunities which could be proposed; and

(4) Contracting officers shall promote the fact that they are seeking to buy recovered materials at pre-bid and pre-proposal conferences, where applicable.

IV. Procedures for Vendor Estimation and Certification.

A. Estimation. DOT's minimum content standards for EPA designated items shall be specified in the statement of work. Vendors responding to solicitations for EPA designated items must meet the minimum content standards; therefore a separate estimate from the vendor regarding the percentage of recovered materials in the product is not required unless the product exceed the minimum content standards specified.

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B. Certification. Vendors/offers are responsible for providing written certification to the contracting officer that their products meet minimum content standards, maintaining copies of certification documents, and producing copies of the written certification upon request. (See FAR 23.405 for solicitation provisions and contract clauses.)

C. Verification. COCOs shall periodically review vendor certification documents as part of their review and monitoring processes. Such review shall enable DOT's Environmental Executive to verify DOT's compliance with Executive Order 12873.

D. Exclusions. Federal supply sources such as GSA, GPO, and DGSC have established their own estimation, certification, and verification procedures for EPA-designated items. Therefore, there is no requirement to conduct independent estimation, certification, and verification procedures.

V. Annual Review and Reporting.

A. Federal agencies are required, on an annual basis, to review the effectiveness of its affirmative procurement program and provide reports to the Federal Environmental Executive and to OFPP.

B. OFPP has devised a standard format (Attachment 3) for use in reporting affirmative procurement program effectiveness. The report shall be transmitted to M-60 for consolidation into a Departmental response, which has historically been due in December of each year. However, since the reporting format and due date of the report has changed over the years, M-60 will provide each OA an updated reporting format, if necessary, and the response date in writing in sufficient time for the OAs to respond in a timely manner.

OAs are requested to substitute the OA's title in place of the term "Agency" when responding to the questions in the report at Attachment 3. The report shall be transmitted to M-60 for consolidation into a Departmental response, which is traditionally in December of each calendar year.

VI. Waste Prevention. Executive Order 12783 encourages Federal agencies to implement waste prevention techniques, such as electronic transfer and double-sided copying, so that annual expenditures for recycled printing and writing paper do not exceed current annual budgets for paper products as measured by average annual expenditures. To this end, it DOT policy that a contractor submitting paper documents relating to an acquisition, should, if possible, submit those documents printed/copied double-sided on recycled paper (see FAR 4.303). The clauses at FAR 52.204-5, Printing/Copying Double-Sided on Recycled Paper, shall be inserted in solicitations and contracts greater than the simplified acquisition threshold.

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Attachment 1

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

November 2, 1992

POLICY LETTER NO. 92-4

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Procurement of Environmentally-Sound and Energy-Efficient Products and Services

1. Purpose. This Policy Letter provides Executive branch policies for the acquisition and use of environmentally-sound, energy-efficient products and services.
2. Supersession Information. The Policy Letter supersedes and cancels OFPP Policy Letter 76-1, Federal Procurement Policy Concerning Energy Conservation, dated August 6, 1976; Supplement No. 1 to Policy Letter 76-1, dated July 2, 1980, and OFPP Policy Letter 77-1, Procurement of Products that Contain Recycled Material, dated February 2, 1977.
3. Authority. The Policy Letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, 41 U.S.C. 405, and section 6002 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6962. RCRA, section 6002 requires OFPP to issue coordinated policies to maximize Federal use of recovered material.
4. Definitions
 - a. Executive Agency. Means an Executive department, and an independent establishment within the meaning of 5 U.S.C. 101, 102, 103(1) and 104(1), respectively.
 - b. Recovered Material. Means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from and commonly reused within, an original manufacturing process (42 U.S.C. 6903(19)).
 - c. Post-Consumer Waste. Means a material or product that has served its intended use and has been discarded for disposal after passing through the hands of a final user. Post-consumer waste is a part of the broader category "recycled material" (40 CFR 247.101(e)).
 - d. Recycled Materials Means a material that can be utilized in place of a raw or virgin material in manufacturing a product and consists of materials derived from post-consumer waste, industrial scrap, material derived from

agricultural waste and other items, all of which can be used in the manufacture of new products (40 CFR 247 101(g)).

- e. Environmentally-Sound. Means a product or service that minimizes damage to the environment and is less harmful to the environment to use, maintain and dispose of in comparison to a competing product or service.
 - f. Cost-Effective Procurement Preference Program. Means a program that favors, where price and other factors are equal, the procurement of products and services that are more environmentally-sound or energy-efficient than other competing products and services.
 - g. Preference. Means when two products or services are equal in performance characteristics and price, the Government in making purchasing decisions, will favor the product that is more environmentally-sound or energy-efficient.
5. Background. In its day-to-day operations, the Federal Government has the opportunity and obligation to be environmentally and energy conscious in its selection and use of needed products and services. The Government, as the largest single consumer in the nation, has many opportunities to conserve and make more efficient use of energy and other resources. Leveraging the Government's \$190 billion annual purchasing program toward more energy-efficient and environmentally-sound practices will not only benefit the nation by reducing the cost of Government, but will help make the Government a model consumer.
6. Policy. It is the policy of the Federal Government that Executive agencies implement cost-effective procurement preference programs favoring the purchase of environmentally-sound, energy-efficient products and services.
- a. Energy Efficiency. Executive agencies shall consider energy conservation and efficiency factors in the procurement of property and services, pursuant to the Energy Policy and conservation Act, 42 U S C 6201, et seq; section 3 of Executive Order 11912, as amended, April 13, 1976, and section 5 of Executive Order 12759, April 17, 1991. Energy conservation and efficiency data will be considered, along with estimated cost and other relevant factors, in the development of purchase requests, invitations for bids and solicitations for offers. In addition, with respect to the procurement of consumer products, as defined under Part B, Title III of the Energy Policy and Conservation Act, agencies shall consider energy use/efficiency labels (42 U.S.C. 6294) and prescribed energy efficiency standards (42 U.S.C. 6295) in making purchasing decisions.
 - b. Environmental Conservation. Executive agencies shall give preference in their procurement programs to practices and products that conserve natural resources and protect the environment, pursuant to the Resource conservation and Recovery Act as amended, 42 U.S.C. 6962 and Executive Order 12780, October 31, 1991. Environmental factors will be considered, along with estimated costs and other relevant factors, in the development of purchase requests, invitations for bids, and solicitations for offers.

7. Responsibilities.

a. Heads of Executive Agencies. In implementing the policies in Paragraph 6, above, Executive agencies shall:

- (1) Identify and procure needed products and services that, all factors considered, are environmentally-sound and energy-efficient;
- (2) Procure products, including packaging, that contain the highest percentage of recovered materials, and where applicable, post-consumer waste, consistent with performance requirements, availability, price reasonableness and cost effectiveness;
- (3) Employ life cycle cost analysis, whenever feasible and appropriate, to assist in making product and service selections;
- (4) Use product descriptions and specifications that reflect cost-effective use of recycled products, recovered materials, water efficiency devices, remanufactured products and energy-efficient products, materials and practices;
- (5) Work with private standard setting organizations and participate, pursuant to OMB Circular No A-119, in the development of voluntary standards and specifications defining environmentally-sound, energy-efficient products, practices and services;
- (6) Require vendors to certify the percentage of recovered materials used, when contracts are awarded wholly or in part on the basis of utilization of recovered materials;
- (7) Assure, when drafting or reviewing specifications for required items, that the specifications (a) do not exclude the use of recovered materials; (b) do not unnecessarily require the item to be manufactured from virgin materials; and (c) require the use of recovered materials and environmentally-sound components to the maximum extent practicable without jeopardizing the intended end use of the item; and
- (8) Arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery. Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuel derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

b. Special Requirements for Paper. In implementing the policy in Paragraph 6.b. for paper and paper products acquired through the General Services Administration (GSA) or the Government Printing Office (GPO), Executive agencies shall:

- (1) Designate that the paper and paper products identified in the "GSA Recycled Products Guide" or the "GSA Supply Catalog" be provided, where practicable, when ordering paper from GSA.
- (2) Provide information to the Joint Committee on Printing and the Government Printing Office regarding the highest practicable percentages of recovered materials (including post-consumer recovered material) allowable in the various paper requirements of the agency subject to reasonable price, performance and availability limitations
- (3) Specify in paper orders, placed through either the Government Printing Office or the General Services Administration, or printed product orders, placed through the Government Printing Office, the highest minimum content paper specifications standard (including post-consumer recovered material standards) developed by the Joint Committee on Printing and the Government Printing Office for the intended use, subject to reasonable price, performance and availability limitations.
- (4) Refrain from specifying coated papers, brand name papers, and other specialty or fancy grades of paper for products with a limited useful life such as annual reports, catalogues, training materials and telephone directories. Newsprint containing recycled content should be considered for many limited life documents.

(Note: Copies of the GSA "Recycled Products Guide" or the "GSA Supply Catalog" may be obtained by contacting the GSA Centralized Mailing List Service in Fort Worth, TX 76115: Commercial (817) 334-5215 or Autovon 739-7369).

c. Affirmative Procurement Programs. In addition to the responsibilities in subparagraph a. and b. above, Executive agencies must take the following actions:

- (1) Develop agency specific affirmative procurement programs for each of the items covered by guidelines developed by the Environmental Protection Agency pursuant to subsection 6002(e) of RCRA (see 40 CFR 248-250, 252 and 253). These programs, as a minimum, must comply with RCRA subsection 6002(i) and must:
 - (a) state a preference for the procurement of the item covered by the guideline;
 - (b) promote the cost-effective procurement of the covered item;
 - (c) require estimates of the total amount of the recovered item used in a contract, certification of the minimum amount actually used, where appropriate, and procedures for verifying the estimates and certifications;
 - (d) provide for the annual review and monitoring of the effectiveness of the program; and

- (e) include one of the following options, or a substantially equivalent alternative, to insure that contracts for items covered by the guidelines are awarded, unless waivers are granted pursuant to paragraph (2) below, on the basis of
 - Case-by-case procurement, open competition between products made of virgin materials and products containing recovered materials; preference to be given to the latter, or
 - Minimum-content standards, which identify the minimum content of recovered materials that an item must contain to be considered for award
- (2) Base decisions to waive, or not to procure, guideline items composed of the highest percentages of recovered materials practicable on a determination that such items:
 - (a) are not reasonably available within the time required;
 - (b) fail to meet the performance standards set forth in applicable specifications or fail to meet the reasonable performance standards of the procuring agencies;
 - (c) are only available at an unreasonable or
 - (d) are not available from a sufficient number of sources to maintain a satisfactory level of competition.

(Note Any determination under (2)(b), above, shall be made on the basis of National Institute of Standards and Technology guidelines when the items being procured are covered by such guidelines.)

- (3) The responsibilities specified in c.(1) and (2) above, apply only to purchases of guideline items costing \$10,000 or more or where the quantity of such items, or of functionally- equivalent items, acquired in the course of the preceding year was \$10,000 or more.
 - (4) Compliance with RCRA, Section 6002, can also be waived where such compliance would be inconsistent with actions taken pursuant to guidelines for the management of solid waste promulgated by EPA under RCRA, Section 6907.
8. Federal Acquisition Regulation (FAR) Councils. The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council shall conduct a thorough review of the relevant parts of the FAR to (1) assure that no unintended encumbrances to the acquisition of environmentally-sound, energy-efficient products and services are contained therein, and (2) that the procurement policies established by this Policy Letter are fully reflected in the FAR within 210 days of the effective date of this Policy Letter.

9. Reporting Requirements. In accordance with Section 502, Executive Order 12780 and subsection 6002(i) of RCRA, each Executive agency shall review annually the effectiveness of its affirmative procurement program and shall provide a report regarding its findings to the Environmental Protection Agency and to the OFPP beginning with a report covering Fiscal Year 1992. Such report shall be transmitted by December 15 each year. Reports required by this paragraph may be made available to the public.
10. Effective Date. This Policy Letter is effective 30 days after the date of issuance. While full implementation of these policies must await needed change to the FAR, it is expected that agencies will take all appropriate actions in the interim to implement those aspects of the policy that are not dependent upon regulatory change.
11. Federal Acquisition Regulatory Council. Pursuant to sections 6(a) and 25(f) of the OFPP Act, as amended, 41 U.S.C. 401 et sea , the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this Policy Letter is published in the Federal Register. The 210 day period is considered a "timely manner" as prescribed in 41 U.S.C. 405(b).
12. Information. Questions or inquiries about this Policy Letter should be directed to Linda Mesaros or Cyndi Vallina, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone (202) 395-3501.

(Original signed by)

Allan V. Burman
Administrator

DEFINITIONS

Acquisition - acquiring by contract using appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, or demonstrated and evaluated. Acquisition begins when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation, selection of sources, contract award and financing details, contract performance and administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. [EO 12873]

Affirmative Procurement Program (APP) - a program assuring Guideline items composed of recovered materials will be purchased to the maximum extent practicable, consistent with Federal law and procurement regulations. [RCRA, section 6002]

Case-by-Case Procurement - open competition for contract awards among products made of virgin and recovered materials with preference being given to the latter (vice identifying minimum content standards required). [RCRA, section 6002]

Certification - provided by offerors/bidders/vendors, it is written documentation certifying the percentage of recovered materials contained in products or to be used in the performance of the contract is at least the amount required by applicable specifications or other contractual requirements. Certification on multi-component or multi-material products should verify the percentage of postconsumer waste and recycled material contained in the major constituents of the product. [EPA Guidelines]

Cost-Effective Procurement Preference Program - a procurement program favoring more environmentally-sound or energy-efficient products and services than other competing products and services, where price and other factors are equal. [OFPP Policy Letter 92-4]

Designated Item - an available EPA guideline item or category of items, made with recovered material, advancing the purpose of RCRA when purchased. [RCRA, section 6002]

Environmentally Preferable - products or services having a lesser or reduced effect human health and the environment when compared with competing products or services, serving the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or product or service disposal. [EO 12873]

Environmentally-Sound - a product or service less damaging to the environment when used, maintained, and disposed of in comparison to a competing product or service. [OFPP Policy Letter 92-4]

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Estimation - quantitative determination made by vendors of the total percentage of recovered material contained in offered products. Estimations should be based on historical or actual percentages of recovered materials in products sold in substantial quantities to the general public or on other factual basis. EPA recommends procuring agencies maintain records of these documents for three years by product type, quantity purchased, and price paid. [EPA Guidelines]

Executive Agency or Agency - an Executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense. [EO 12873]

Federal Supply Source - any supply source managed by a Federal agency such as the General Services Administration, Government Printing Office, or Defense General Supply Center. [_____ Guidance]

Life-Cycle Analysis - the comprehensive examination of a product's environmental and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal. [EO 12873]

Minimum Content Standard - the minimum recovered material content specifications set to assure the recovered material content required is the maximum available without jeopardizing the intended item use or violating the limitations of the minimum content standards set forth by EPA's guidelines. [RCRA, section 6002]

Performance Specification - a specification stating the desired product operation or function but not specifying its construction materials. [EPA Guidelines]

Postconsumer Material - a material or finished product whose life as a consumer item has concluded, after having served its intended use and being discarded for disposal or recovery. "Postconsumer material" is a part of the broader category of "recovered materials". [EO 12873]

Postconsumer Waste - a material or product, discarded for disposal after passing through the hands of a final user, having served its intended purpose. Postconsumer waste is part of the broader category "recycled material." [OFPP Policy Letter 92-4 and 49 CFR 247.101(e)]

Practicable - capable of performing in accordance with applicable specifications, available at a reasonable price and within a reasonable period of time, and while a satisfactory level of competition with other products is being maintained [EPA Guidelines]

Preference - when two products or services are equal in performance characteristics and price, the Government, in making purchasing decisions, will favor the more environmentally-sound or energy-efficient product. [OFPP Policy Letter 92-4]

Preference Standard - the highest practicable minimum content standards for products. When minimum content is impractical to calculate, preference is for the presence of a recovered material or an environmentally-preferable trait (i.e., retread tires).

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Procurement Guidelines - regulations issued by EPA pursuant to section 6002 of RCRA: (1) identifying items produced (or can be produced) with recovered materials and where procurement of such items will advance the objectives of RCRA; and (2) providing recommended practices for the procurement of such items. [RCRA, section 6002]

Procuring Agency - any Federal or State agency, or agency of a state's political subdivision using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract. [EPA Guidelines]

Recovered Material - waste materials and by-products recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process. [EO 12873 and 42 U.S.C. 6903 (19)]

Recyclability - the degree to which a product or material may be recovered or otherwise diverted from the solid waste stream for the purpose of recycling [EO 12873]

Recycled Material - a material utilized in place of raw or virgin material in product manufacturing consisting of materials derived from postconsumer waste, industrial scrap, material derived from agricultural wastes, and other items, all of which can be used in new product manufacture. [EPA Guidelines and OFPP Policy Letter 92-4]

Recycling - the series of activities, including collection, separation, and processing, by which materials are recovered from the solid waste stream for use as raw materials in the manufacture of new products (other than fuel for producing heat or power by combustion). [EO 12873]

Solid Waste - garbage, refuse, sludges, and other discarded solid materials, including those from industrial, commercial, and agricultural operations, and from community activities. This **excludes** solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flow, etc.. [EPA Guidelines]

Specification - a clear and accurate description of the technical requirements for materials, products, or services including the minimum requirement for materials' quality and construction and any equipment necessary for an acceptable product. In general, specifications are in the form of written descriptions, drawings, prints, commercial designations, industry standards, and other descriptive references. [EPA Guidelines]

Unreasonable Price - when recycled product cost is greater compared to virgin material cost. (Unreasonable price is not a factor when minimum content standards are specified in the statement of work/procurement request, because price estimates will only be obtained from vendors who can supply products meeting recovered material content requirements.)

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Verification - procedures used by procuring agencies to confirm both vendor estimates and certifications of the percentages of recovered material contained in the products supplies to them or to be used in the performance of a contract. (EPA Guidelines)

Virgin Material - a mined or harvested raw material to be used in manufacturing. (EPA Guidelines)

Waste Prevention - (also known as "source reduction") any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their toxicity before they become municipal solid waste. Waste prevention also refers to the reuse of products or materials. (Executive Order 12873)

Waste Reduction - preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products. (Executive Order 12873)

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Attachment 3

OUTLINE FOR FEDERAL REPORT TO THE OFFICE OF FEDERAL PROCUREMENT POLICY

Date Prepared: _____

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) Agency Summary Report for Fiscal Year _____

Agency or Department: _____

Agency Contact: _____
(Name)

(Title)

Telephone Number: _____

I. EPA Guideline Items

A. Fly Ash.

a. Total dollar amount of concrete and cement purchased by your agency in FY _____
\$ _____

b. Total dollar amount of concrete and cement containing fly ash purchased by your agency in FY _____
\$ _____

B. Paper and Paper Products. GSA will provide data for agencies' paper products *purchases made through their retail and wholesale stock program.* However, for agency purchases please provide amounts from any other source.

a. Total dollar amount of paper and paper products purchased by your agency from sources other than GSA retail and wholesale stock programs in FY _____ \$ _____

b. Total dollar amount of paper and paper products containing recycled material purchased by your agency from sources other than GSA retail and wholesale stock programs in FY _____ \$ _____

C. Lubricating Oils.

a. Total dollar amount of lubricating oils purchased by your agency in FY _____ \$ _____

b. Total dollar amount of lubricating oils containing re-refined oil purchased by your agency in FY _____ \$ _____

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D. Retread Tires. [Refer to the Federal Supply Schedule for Pneumatic Tires, FSC Group 26, Part II, Section A for items covered by this guideline.]

a. Total dollar amount of tires (excluding airplanes tires) purchased by your agency in FY ____
\$ _____

b. Total dollar amount of retread tires (excluding airplane tires) purchased by your agency in FY ____
\$ _____

E. Building Insulation Products.

a. Total dollar amount of building insulation products purchased by your agency in FY ____ \$ _____

b. Total dollar amount of building insulation products containing recycled materials purchased to your agency in FY ____ \$ _____

II. Specifications. RCRA, Section 6002(d) requires Federal activities having responsibility for preparing specifications, to review them to eliminate unnecessary requirements for the use of virgin materials and prohibitions against using recovered materials and add preferences for recovered materials.

a. Does your agency have responsibility or control over a particular Federal Supply class or group of specifications or standards? Yes ____ No ____

b. How many product specifications, standards, Commercial Item Descriptions (CIDs), product descriptions or other similar documents _____s your agency control?
Number _____

c. How many such documents have been reviewed prior to FY ____?

(1) remove any unnecessary requirements for virgin material only? Number _____

(2) remove language prohibiting the use of recovered materials? Number _____

(3) add preference language for recovered materials? Number _____

d. How many requirements for virgin materials only were deleted from such documents prior to FY ____? Number _____

e. How many references of language prohibiting the use of recovered materials were removed from such documents prior to FY ____? Number _____

f. How many preferences for recovered materials were added to such documents prior to FY ____? Number _____

g. How many such documents were reviewed in FY ____?

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(1) remove any unnecessary requirements for virgin material only? Number _____

(2) remove language prohibiting the use of recovered materials? Number _____

(3) add preference language for recovered materials? Number _____

h. How many requirements for virgin materials only were deleted from such documents in FY____? Number _____

i. How many references of language prohibiting use of recovered materials were removed from such documents in FY____? Number _____

j. How many preferences for recovered materials were added to such documents in FY____? Number _____

[Please provide examples of added or deleted requirements (append additional pages, if necessary.).]

k. How many documents are scheduled for review in FY____? Number _____

l. Do you know of any requirement for virgin materials or language prohibiting the use of recovered materials needing deletion from specifications, CIDs, or product descriptions?
Yes____ No____

m. If yes, have you advised the managing agency to remove the requirement?

n. Do you know of any specifications, CIDs, or product descriptions that could be improved with the addition of preference language for recovered materials?

o. If yes, have you advised the managing agency to add the requirements?
Yes____ No____

[Please provide some details such as copies of correspondence, examples of products, and descriptions of actions.]

III. General Requirements.

a. Describe problems and suggestions for resolving any problems encountered by your agency in implementing EO 12873.

b. Describe any Best Practices or Lessons Learned by your agency in purchasing the EPA recycled Guideline Items.

c. Describe any Best Practices or Lessons Learned by your agency in purchasing recycled items, other than the Guideline Items.

APPLICABILITY

General:

Section 6002(a) of RCRA and EPA's procurement guidelines apply to all procuring agencies, defined as "any Federal agency, or an State agency, or agency of a political subdivision of a State which uses appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." The Applicability Key set forth below:

- First determines those parties responsible for developing and implementing an APP and those responsible for APP compliance. DOT as a Federal agency has developed a comprehensive APP (TAM 1223, Appendix A), which shall be implemented by all OA program offices, operations offices, sites and applicable contractors. OAs must take steps to carry out DOT's comprehensive APP.

- Second, EPA's procurement guidelines only apply to an agency whose total annual purchases (for each designated item) equal \$10,000 or more, or when the procuring agency purchased \$10,000 or more of the item (or of a functionally equivalent item) during the preceding year. Thus, the procurement requirements identified in EPA's guidelines apply to DOT as a whole and all OA program offices, operations offices, sites, and applicable contractors shall be responsible for implementing the procurement requirements outlined in both this document and EPA's guidelines.

Contractors:

DOT's APP and this guidance shall only apply to such contractors as long as appropriate provisions are contained in the contracts. It is the responsibility of each OA to ensure that appropriate existing contracts are revised to include APP compliance provisions, and appropriate new contracts contain APP compliance provisions (FAR 52.204-4, 52.223-4, 52.223-8, 52.223-9).

Nothing in DOT's APP would preclude a DOT contractor from voluntarily implementing an APP until such time as provisions are incorporated into the contract.

State and Local Agencies:

State and local agencies purchasing more than \$10,000 worth of a particular EPA-designated item in a year, and using some Federal funds for these purchases, are required to establish an APP for those particular items. The APP must include the four elements specific by Section 6002 of RCRA: (1) a preference program; (2) a promotion program; (3) estimation, certification, and verification procedures; and (4) procedures for annual review and monitoring.

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APPLICABILITY KEY

1. Are you a procuring agency?

RCRA Section 1004(17) defines a procuring agency as "any Federal agency, or any State agency or agency of a political subdivision of a State using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract."

- Federal agencies are always procuring agencies.
- A State or local agency is a procuring agency when it uses appropriated Federal funds for a procurement.
- A contractor is a procuring agency when it is contracting with a Federal agency or State or local agency using appropriated Federal funds for a procurement.
- Only Government agencies and their contractors are or can become "procuring agencies."

Private party recipients of Federal loans, grants, or funds under cooperative agreements are not procuring agencies.

2. Are you purchasing or acquiring a designated item?

3. Are you purchasing \$10,000 or more of a designated item or did you purchase at least \$10,000 of a designated item in the preceding fiscal year?

RCRA Section 6002(a) requires "a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds \$10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was \$10,000 or more."

- The \$10,000 threshold applies to each procuring agency as a whole.
- If a procuring agency has determined it purchased \$10,000 worth of a designated item or functionally equivalent items during the preceding year, it is subject to RCRA Section 6002. If so, the requirements apply to all purchases of these items occurring in the current fiscal year.
- If the procuring agency did not procure \$10,000 worth of a designated item in the preceding fiscal year, it is not subject to RCRA Section 6002, unless, in the current fiscal year, it purchases \$10,000 or more of a designated item in a single procurement action. If so, the requirements apply to the single procurement and to all subsequent purchases of the designated item made during the current fiscal year.

¹Source: EPA Office of Solid Waste; please refer questions to the EPA Hotline number 1-800-424-9346 or in the Washington DC area 703-412-9810.

RECOVERED MATERIALS DETERMINATION FORM

Instructions: This form is to be completed by the procurement originator where the items or deliverables subject to DOT's Affirmative Procurement Program (APP) for recovered Materials (TAM 1223, Appendix A) are being procured from outside vendors. This form is not required for items requisitioned from established Federal supply sources.

1. The procurement originator (program official) lists the EPA designated item(s) which apply to the procurement request, and signs and dates the bottom of the form

2. The completed form becomes part of the official contracting office contract file.

Procurement Request No: _____

The Statement of Work/Specifications covering this procurement request is subject to the DOT APP for recovered materials. The items being procured are:

I hereby certify that the Statement of Work/Specifications for the requisition of materials/services listed above complies with applicable DOT preference standards for recycled/recovered materials.

Procurement Originator's Signature

Date

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Attachment 7

REQUEST FOR WAIVER

Instructions: This form is needed only if the item(s) being procured are subject to DOT's Affirmative Procurement Program (APP) for Recovered Materials.

1. This form is to be completed by the procurement originator (program official) and contracting officer, as appropriate, when items subject to DOT's APP are not procured.

2. The procurement originator and contracting officer checks the appropriate justification(s), provides a written explanation, and signs and dates the form

3. The original form is maintained in the official contract file.

Procurement Request No: _____

1. To be completed by the contracting officer:

Products containing recovered materials and meeting DOT's preference standards for the following designated items:

were not obtained because:

_____ Use of minimum content standards would result in inadequate competition.

_____ Products containing recovered materials would require paying a price premium

_____ Other: (Written justification for not procuring designated items containing recovered material.)

Remanufactured or recycled toner cartridges for use in laser printers, photocopies, facsimile machines, or micrographic printers were not obtained because: (See TAM 1223, Appendix A, Section II.B.)

Contracting Officer's Signature

Date

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2. To be completed by Procurement Originator:

Products containing recovered materials and meeting DOT's preference standards for the following designated items:

were not obtained because:

_____ Items do not meet all reasonable performance specifications.

_____ Items are not available within a reasonable period of time.

_____ Other: (Written justification for not procuring designated items containing recovered material.)

Procurement Originator's Signature

Date

Attach additional pages, if needed.

GSA Federal Supply Service

Recycled Paper and Paper Products, Building Insulation, Recycled Toner Cartridges, and Other Environmental Products

The products listed above are available through GSA's Federal Supply Service. GSA produces several publications (Table B.2) to assist customers identify and requisition products.

Table B.2 GSA Federal Supply Service Publications

<i>Publication</i>	<i>Description</i>
<i>GSA Supply Catalog</i>	<p><i>Contains information on several thousand products available through the Federal Supply Service, including hundreds of recycled and environmentally preferable products (highlighted in green for easy identification).</i></p> <p><i>Also includes information on requisitioning these products through GSA.</i></p>
<i>Environmental Products Guide (formerly Recycled Products Guide)</i>	<i>A separate listing of hundreds of recycled and environmentally preferable products.</i>
<i>Customer Assistance Guide</i>	<p><i>A detailed introduction to the Federal Supply Service. Also contains complete listings of regional Customer Service Directors, Customer Supply Centers, and Commodity Centers.</i></p> <p><i>Includes a list of Business Service Centers where prospective vendors can obtain information on contracting opportunities with GSA.</i></p>
<i>Marketips</i>	<p><i>A bimonthly bulletin frequently containing information about new environmentally preferable items being introduced.</i></p> <p><i>Includes customer training seminars scheduled through GSA's regional offices.</i></p>

The publications listed above are available through:

*Centralized Mailing List Service (CMLS)
P.O. Box 6477
Fort Worth, TX 76115*

Phone: (817) 334-5215 FAX: (817) 334-5227

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CHAPTER 1228

BONDS AND INSURANCE

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CHAPTER 1228

BONDS AND INSURANCE

SUBCHAPTER 1228.1--BONDS

1228.101 Bid guarantees.

1228.101-1 Policy on use.

(c) The authority of the agency head under (FAR) 48 CFR 28.101-1(c) is delegated to the HCA.

1228.105 Other types of bonds.

The authority of the HCA under (FAR) 48 CFR 28.105 is delegated to the contracting officer.

1228.106 Administration.

1228.106-2 Substitution of surety bonds.

(a) The authority of the HCA under (FAR) 48 CFR 28.106-2(a) is delegated to the contracting officer.

1228.106-6 Furnishing information.

(c) The authority of the head of the agency under (FAR) 48 CFR 28.106-6(c) is delegated to the contracting officer.

SUBCHAPTER 1228.2--SURETIES

1228.202 Acceptability of corporate sureties.

(d) Treasury Circular 570 is published annually on July 1. Interim changes are published in the Federal Register as they occur and may be obtained at the address shown in (FAR) 48 CFR 28.202(d) or through the Department of Treasury Bulletin Board system at (202) 874-7214.

1228.203 Acceptability of individual sureties.

1228.203-7 Exclusion of individual sureties.

The authority of the agency head under (FAR) 48 CFR 28.203-7(a) and (d) is delegated to the HCA.

1228.204 Options in lieu of sureties.

1228.204-70 Irrevocable letters of credit.

OFPP Policy Letter 91-4 dated November 8, 1991, authorizes the use of irrevocable letters of credit, in lieu of sureties, on Federal construction

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contracts requiring Miller Act bonds. OFPP Pamphlet No. 7, "Guidance for Implementing Policy Letter 91-4," is available from the OMB, Office of Publications, at (202) 395-7332. The pamphlet includes a listing of services provided by bank rating companies, responsibilities of the Government and its contractors, as well as sample letters of credit forms.

SUBCHAPTER 1228.3--INSURANCE

1228.305 Overseas workers' compensation and war hazard insurance.

(d) The authority of the agency head under (FAR) 48 CFR 28.305(d) is delegated to the HCA.

I 1228.311-1 Contract clause.

The authority to waive the requirement for use of (FAR) 48 CFR 52.228-7, Insurance Liability to Third Persons, in solicitations and contracts, other than those for construction and when a cost reimbursement contract is contemplated, is delegated to one level above the contracting officer.

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CHAPTER 1230

COST ACCOUNTING STANDARDS ADMINISTRATION

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CHAPTER 1230

COST ACCOUNTING STANDARDS ADMINISTRATION

SUBCHAPTER 1230.2- -CAS PROGRAM REQUIREMENTS

1230.201 Contract requirements.

I 1230.201-5 Waivers.

(a) The Cost Accounting Standards Board (CASB) has delegated the authority to waive (FAR) 48 CFR Appendix B, 9904.412-40(c), Assignment of pension cost, to the SPE without power of redelegation. This delegation is effective in instances in which the overfunded status of qualified pension plans precluded Federal tax deductibility of contributions, or would have caused the incurrence of a 10 percent excise tax on such overfunding.

(b) Waiver requests to 9904.412-40(c), Assignment of pension cost, are to be submitted to M-60, in accordance with (FAR) 48 CFR 1.4 and TAM 1201.4, and include an assessment of the respective interest of both the Government and the contractor in terms of the achievement of equitable contract costing. M-60 will process the waiver and, pursuant to OFPP requirements, provide a copy of approved waivers to the CASB Executive Secretary.

(c) The Cost Accounting Standards Board has delegated the authority to waive the application of the Cost Accounting Standards to individual firm fixed-price contracts for the acquisition of commercial items when cost or pricing data is not obtained. This authority is delegated to the Heads of Contracting Activities without power of redelegation.

1230.202 Disclosure requirements.

1230.202-2 Impracticality of submission.

The authority of the agency head under (FAR) 48 CFR 30.202-2 is nondelegable.

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CHAPTER 1232

CONTRACT FINANCING

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CHAPTER 1232

CONTRACT FINANCING

SUBCHAPTER 1232. 006- -REDUCTION OR SUSPENSION OF CONTRACT PAYMENTS UPON FINDING OF FRAUD

1232. 006-3 Responsibilities.

(a) The authority to develop specific procedures under (FAR) 48 CFR 32.006-3(a) is delegated to the DOT Office of Inspector General.

1232. 006-4 Procedures.

(a) The remedy coordination official for DOT is the Inspector General.

SUBCHAPTER 1232. 1- -NON-COMMERCIAL ITEM PURCHASE FINANCING

1232.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion are authorized only under contracts for construction, alteration, and repair, shipbuilding, and architect-engineering. Contracting officers shall ensure that the payments are commensurate with the work and that the work meets the requirements of the contract. When contracting officers propose to make these types of payments under other contracts, a written D&F in the format of Appendix A shall be signed by the HCA. The D&F must indicate the reasons why progress payments based on costs cannot be practically used and why it is feasible to administer progress payments based on a percentage or stage of completion.

1232.105 Uses of contract financing.

(a)(2) DOT is not listed under (FAR) 48 CFR Part 32 as a loan guaranteeing agency; therefore, the exceptions under (FAR) 48 CFR 32.105(a) do not apply to DOT.

SUBCHAPTER 1232. 2- -COMMERCIAL ITEM PURCHASE FINANCING

1232.206 Solicitation provisions and contract clauses.

(g) The authority to develop agency procedures under (FAR) 48 CFR 32.206 is delegated to the HCA.

(g)(2) The authority to develop agency procedures under (FAR) 48 CFR 32.206 is delegated to the HCA.

SUBCHAPTER 1232. 4- -ADVANCE PAYMENTS

1232.402 General.

(c)(1)(iii)(A) When the proposed advance payment will be \$500,000 or less, the authority of the agency head under (FAR) 48 CFR 32.402(c)(1)(iii)(A) is delegated

to the contracting officer. When the advance payments will be over \$500,000, the authority is delegated to the COCO.

(c)(1)(iii)(B) When the proposed advance payment will be \$50,000 or less, the authority of the agency head under (FAR) 48 CFR 32.402(c)(1)(iii)(B) is delegated to the contracting officer. When the proposed advance payment will be over \$50,000, the authority is delegated to the DOT Board of Contract Appeals (DOTBCA). The contracting officer shall make a recommendation for approval or disapproval to the DOTBCA (S-20).

(e)(2) When the contracting officer proposes to provide advance payments to a contractor, the requisitioning office, legal counsel, and finance office shall be consulted prior to writing the D&F required by (FAR) 48 CFR 32.402(c)(1)(iii). The D&F shall be written in the format of (FAR) 48 CFR 32.410.

1232.404 Exclusions.

(a)(9) Unless otherwise approved by M-60, no other types of transactions are excluded from the requirements of (FAR) 48 CFR Subpart 32.4.

1232.407 Interest.

(d) Contracting officers are authorized, subject to the approval of the appropriate official shown below, only to exclude interest from advance payments on the contracts listed under (FAR) 48 CFR 32.407(d). The authority of the agency head under (FAR) 48 CFR 32.407(d) is delegated as follows:

(1) To the contracting officer, when no interest will be charged on advance payments of \$500,000 or less under the authority of (FAR) 48 CFR 32.402(c)(1)(iii)(A);

(2) To the COCO, when no interest will be charged on advance payments over \$500,000 under the authority of (FAR) 48 CFR 32.402(c)(1)(iii)(A);

(3) To the contracting officer, when no interest will be charged on advance payments of \$50,000 or less under the authority of (FAR) 48 CFR 32.402(c)(1)(iii)(B); and

(4) To the DOTBCA, when no interest will be charged on advance payments over \$50,000 under the authority of (FAR) 48 CFR 32.402(c)(1)(iii)(B).

1232.409 Contracting officer action.

1232.409-1 Recommendation for approval.

After review by counsel, the D&F and the other items mentioned under (FAR) 48 CFR 32.409-1 shall be forwarded through appropriate channels to the approving official (see TAM 1232.402) for review and approval. Contracting officers shall also discuss the proposed payments with the applicable finance office to ensure compliance with all Department of Treasury regulations governing these payments.

1232.409-2 Recommendation for disapproval.

Contracting officers shall transmit the information required by (FAR) 48 CFR 32.409-2 through appropriate channels to the approving official under TAM 1232.402 for review and approval of the recommendation to disapprove the request for advance payment.

SUBCHAPTER 1232.5--PROGRESS PAYMENTS BASED ON COSTS

1232.501 General.

1232.501-2 Unusual progress payments.

(a)(3) The authority of the HCA under (FAR) 48 CFR 32.501-2(a)(3) is delegated to the COCO.

1232.502 Preaward matters.

1232.502-2 Contract finance office clearance.

Contracting officers shall obtain written approval and coordination from the officials named below before taking any of the following actions:

(a) From the COCO, to provide a progress payment rate higher than the customary rate (see (FAR) 48 CFR 32.501-1);

(b) From the COCO, to deviate from the progress payment terms prescribed in (FAR) 48 CFR Part 32; and

(c) When providing progress payments to a contractor--

(1) From the COCO (with advice from OA legal counsel), when the contractor's financial condition is in doubt;

(2) From the COCO (with advice from OA legal counsel), when the contractor has had an advance payment request or loan guarantee denied for financial reasons (or approved but withdrawn or lapsed) within the previous 12 months; and

(3) From the HCA (with advice from OA legal counsel), when the contractor is named in the consolidated list of contractors indebted to the United States (known commonly as the "Hold-up List").

1232.504 Subcontracts.

(c) The contracting officer shall obtain approval from the COCO to authorize contractors to make unusual progress payments to subcontractors. A written D&F is not required; however, if the contractor's request to make unusual progress payments is granted, the contract file shall be documented to reflect the rationale for the decision.

SUBCHAPTER 1232. 6--CONTRACT DEBTS

1232. 601 Definition.

Contracting officers shall administer the collection of contract debts and applicable interest in accordance with DOT Order 2700.14 series, Credit Management and Debt Collection, as implemented by OA procedures, if any. If OA procedures do not exist, contracting officers shall consult with their finance office concerning debt collection.

1232. 614 Interest.

1232. 614-1 Interest charges.

(a)(3) The contracting officer shall consult with the OA's finance office concerning contractor's debts that may be exempt from interest charges.

1232. 617 Contract clause.

(a)(7) The contracting officer shall consult with the OA's finance office concerning other exceptions that may apply to interest on payments due to the Government by the contractor.

SUBCHAPTER 1232. 7--CONTRACT FUNDING

1232. 702 Policy.

1232. 702-70 Procurement requests.

(a) The contracting officer shall obtain a Form DOT F 4200.1, Procurement Request-Process Rapidly (PR) and Form DOT F 4200.2, Procurement Request Continuation Sheet, from the requiring office prior to executing any contract as defined under (FAR) 48 CFR 2.101. The following requirements apply:

(1) The PR must be certified by a responsible fiscal authority (i.e., funds administrator or finance office).

(2) The PR must be supported by an independent Government estimate as required by TAM 1215. 803.

(3) The PR must meet the requirements of (FAR) 48 CFR 19.804-2(a)(10) when a specific 8(a) firm is nominated to perform the work.

(b) Contracting officers shall reject any PR that fails to provide the above information and any other information the contracting officer deems necessary to carry out the acquisition.

(c) In the case of oral orders (e.g., orders against blanket purchase agreements) and Government credit cards, the person authorized to place the order shall obtain written assurance from a responsible fiscal authority that funds are available prior to placing the order.

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1232. 703-3 Contracts crossing fiscal years.

(b) The authority of the agency head under (FAR) 48 CFR 32.703-3(b) is delegated to the COCO with further authority to redelegate. The authority and delegation in this section does not apply to the Coast Guard.

1232. 770 Volpe National Transportation Systems Center Working Capital Fund.

(a) 49 U.S.C. 328 authorizes a DOT Working Capital Fund for the Volpe National Transportation System Center (VNTSC), Cambridge, MA).

(b) The fund is reimbursed or credited with advanced payments from applicable funds or appropriations of DOT and other agencies, and with advance payments from other sources, the Secretary authorizes for:

(1) Services at rates that will recover the expenses of operation, including the accrual of annual leave and overhead; and

(2) Acquiring property and equipment.

(c) The amounts in the fund are available without regard to fiscal year limitation. However, DOT and other agency officials authorized to execute General Working Agreements or other agreements with VNTSC must insure that these agreements cite any appropriation restrictions (e.g., two year availability of funds, funds earmarked for special programs, etc.). The VNTSC must comply with these restrictions or limitations.

SUBCHAPTER 1232. 8- -ASSIGNMENT OF CLAIMS

1232. 802 Conditions.

(e)(1) The contracting officer is the designated recipient of the document referred to under (FAR) 48 CFR 32.802(e)(1).

1232. 803 Policies.

(d) By memorandum dated October 3, 1995, the President delegated the authority to determine whether to include a no-setoff commitment in any contract, except a contract under which full payment has been made, to the head of the agency. In addition, the memorandum stated that the authority could be further delegated. Therefore, the authority of the head of the agency under (FAR) 48 CFR 32.803(d) is delegated to the HCA with further authority to redelegate.

SUBCHAPTER 1232. 9- -PROMPT PAYMENT

1232. 903 Policy.

(a) The authority of the agency head under (FAR) 48 CFR 32.903 is delegated to the contracting officer.

(b) It is DOT policy to pay invoices in accordance with the requirements of the Prompt Payment Act, as implemented by the FAR and the payment terms and conditions set forth in the contract. Any additional DOT standards for establishing due dates are prescribed in the appropriate (TAR) 48 CFR or TAM paragraph which corresponds to the applicable (FAR) 48 CFR paragraph. Prior to including a payment clause in a solicitation or contract that will require payments to be made earlier than those specified in the Prompt Payment Act, contracting officers shall consult with their cognizant finance office.

1232.904 Responsibilities.

The authority of the agency head under (FAR) 48 CFR 32.904 is delegated to the Assistant Secretary for Administration (M-1).

1232.905 Invoice payments.

(c)(1) The contracting officer's justification for extending the due date beyond the 14 days for payments on construction contracts shall be approved at one supervisory level above the contracting officer. Under no circumstances shall the extended date exceed the periods specified under (FAR) 48 CFR 32.905.

1232.906 Contract financing payments.

The authority of the agency head under (FAR) 48 CFR 32.906 is delegated to M-1.

1232.908 Contract clauses.

(d) Contracting officers shall insert (FAR) 48 CFR 52.232-28, Electronic Funds Transfer Payment Methods, in all solicitations and contracts (including those under the small purchase threshold).

1232.908-70 Electronic funds transfer.

DOT has established with the Department of Treasury Regional Financial Center, Kansas City, MO, an electronic communication connection for payments via the Automated Clearinghouse (ACH) (a nationwide electronic payments network). Since the payment/finance office determines the method of payment (i.e., check, ACH, or FEDLINE) to a contractor, it is in the best interest of DOT to require the FAR clause referenced under TAM 1232.908 in all solicitations and contracts.

SUBCHAPTER 1232.70- -CONTRACT PAYMENTS

1232.7000 Scope of subchapter.

This subchapter prescribes policies and procedures for the submission, review, and approval of payments under cost-reimbursement, time-and-materials, and labor-hour contracts and orders as defined under (FAR) 48 CFR Part 16.

1232. 7001 Policy.

It is the policy of DOT to perform an in-depth review of all invoices and vouchers submitted by contractors under contracts; therefore, the COCO shall ensure that the requirements of this subchapter are met.

1232. 7002 Invoice and voucher review and approval.

(a) Contracting officers are ultimately responsible for the review and approval of each invoice/voucher submitted by the contractor. However, the contracting officer may delegate to a representative, the authority to review and approve invoices submitted for payment under fixed-price contracts. The person delegated this authority shall provide a copy of the approved invoice and supporting documents to the contracting officer for the contract file. The contracting officer cannot delegate the authority to approve vouchers for payment under other than fixed-price contracts. When invoices and vouchers are reviewed, the extent of the review depends on the terms and conditions of the contract. The following list is representative of the tasks associated with reviewing and approving invoices and vouchers.

(1) Ensure that the contractor completes and submits the invoice or voucher in accordance with the contract;

(2) Ensure that the invoice or voucher is "proper" as that term is defined in the contract;

(3) Ensure that the billed costs are allocable to the contract and allowable in accordance with (FAR) 48 CFR Part 31 and any other terms and conditions of the contract;

(4) Ensure that written evidence of receipt, inspection, and acceptance of the supplies or services has been received from a Government representative;

(5) Ensure that the contractor's progress under the contract is commensurate with the payment requested (i.e., the unliquidated progress payments do not exceed the fair value of the work to be accomplished on the undelivered portion of the contract; and

(6) Ensure that the correct amounts are withheld from the invoice or voucher as required by the contract (i.e., progress payment liquidation, percentage of fixed fee, etc.).

(b) When cost-reimbursement payments will be made under the contract, the contracting officer shall obtain the recommendation of Government personnel (i.e., technical representatives, quality assurance inspectors, auditors, etc.) concerning payment of the voucher. The form shown in Appendix B, Memorandum of Payment, (or one substantially similar to it) shall be used to obtain and document the opinion of personnel within DOT. Requests for opinions outside of DOT (e.g., DCAA, HHS, etc.) shall be coordinated with the affected non-DOT personnel.

(c) If it is determined that the amount billed is allocable and allowable, the contracting officer shall furnish the designated payment office with written approval of the amount to be paid the contractor (i.e., Appendix B).

1232. 7003 Record of payment.

(a) The contracting officer and the representative delegated the authority to review and approve invoices shall establish a record of payment file for each contract. The file shall evidence what was paid; what was disallowed or withheld and the rationale for the withholdings or disallowances; the balance available for payment under the contract after the invoice or voucher has been paid; and any correspondence to the contractor concerning the payments.

(b) Payments shall be recorded using the format shown in Appendix C, Record of Payment for Fixed Price Contract, Appendix D, Record of Payment for Cost-Plus-Fixed-Fee Contract, or Appendix E, Record of Payment for Progress Payment (or one substantially similar). These formats may be adopted or adapted for other types of contracts. Computerized records of payment are permissible.

SUBCHAPTER 1232. 71-- CANCELLATION OF MACCOUNTS

1232. 7100 Scope of subchapter.

This subchapter describes the basic requirements of Pub. L. 101-510, enacted November 5, 1990. The statute amended Subchapter IV of Title 31 U.S.C., which prescribes the rules for determining the availability of appropriation and fund balances, and establishes the procedures for closing appropriation and fund accounts.

1232. 7101 Authority.

OMB Bulletin No. 91-07 modifies OMB Circular No. A-34 to implement Pub. L. 101-510.

1232. 7102 General.

Part XI of OMB Circular A-34 sets forth procedures for closing "M" accounts, which are defined as expired accounts that contain unliquidated balances that have been merged. These procedures provide for phasing out existing M accounts and prohibits the establishment of new M accounts. While the finance offices must ensure compliance with these procedures, these fiscal requirements could impact contract instruments (e.g., cost-reimbursement contracts that must receive a final audit prior to contract closeout).

1232. 7103 Revised duration of expired accounts.

(a) No new obligated balances will be transferred to M accounts. Instead, separate expired accounts for each fixed account will be maintained by fiscal year identity for five years.

(1) During the five year period, obligations may be adjusted and disbursements may be made from these accounts. Unobligated balances will NOT be

withdrawn from expired accounts but will remain available for legitimate obligation adjustments but not for new obligations.

(2) As of September 30th of the fifth fiscal year after the period of obligational availability ends, for each account, ALL obligated and unobligated balances shall be cancelled, and the expired account will be closed.

(b) The balances of fixed accounts are cancelled on a definite schedule. The transition from the expired accounts and M accounts established under the old procedures to the expired and closed accounts established under the new procedures will be complete at the end of fiscal year 1995. Appendix F provides the status of old and new balances in fixed accounts, and Appendix G provides a list of dates when balances in fixed accounts are cancelled.

(c) Contracting officers should seek the guidance of their cognizant finance office on the availability of funds for payments under long-term contracts.

DETERMINATION AND FINDINGS

Authority to Make Progress Payments

FINDINGS

1. The *(identify the OA and the contracting office)* of the Department of Transportation proposes to contract for *(describe the supplies and/or services being procured and identify the program/project, if applicable)*.
2. *(Indicate the type of contract proposed and the estimated amount of the contract.)*

DETERMINATION

On the basis of the above findings, I hereby determine that *(explain why progress payments based on costs cannot be practically used and why it will be feasible to administer progress payments based on a percentage or stage of completion basis)*.

(Signature of the HCA)

APPENDIX B

ACTION: Payment under (Enter the DOT number assigned to the contractual instrument)

From (Enter the name and title of the individual authorized to sign this portion of the memorandum - e.g., contracting officer, specialist/administrator, etc.)

To: (Enter the name of the person to whom the memorandum is being sent - e.g., contracting officer's representative, inspector, etc.)

The attached invoice/voucher was submitted by the contractor for payment under the subject contract. Please review this document and provide, as appropriate, your recommendation or acceptance by endorsement below.

(Signature of individual authorized to sign)

Attachment (Enter the invoice or voucher number and the amount)

FIRST ENDORSEMENT

From (Enter the name and title of the individual authorized to sign this portion of the memorandum - e.g., contracting officer's representative, inspector, etc.)

To: (Enter name of the person to whom the memorandum is being sent - e.g., contracting officer, specialist/administrator, etc.)

I have reviewed the attachment(s) and the following applies (check one):

(a) Cost-reimbursement contract. I recommend ___ approval ___ disapproval. The costs incurred ___ are ___ are not reasonable or allocable for the reasons indicated on the attachment.

(b) Fixed-price contract. I recommend ___ approval ___ disapproval.

(1) The supplies or services were accepted on _____ OR

(2) The supplies or services ___ are not acceptable for the reasons indicated on the attachment.

(c) Progress Payment. I recommend ___ approval ___ disapproval for the reasons indicated on the attachment.

(Signature of individual authorized to sign)

Attachment

SECOND ENDORSEMENT

From (Enter name of the contracting officer)

To: (Enter name of the finance officer)

The attached Invoice/Voucher No. *(Insert number and amount)* is approved for payment in the amount of *(Insert amount)*. After this payment, the balance remaining available for payment under this contract is *(Insert amount)*. Please contact me if this balance does not agree with your payment record.

(Signature of contracting officer)

Attachment

STATUS OF OLD AND NEW BALANCES IN THE FIXED ACCOUNTS

1. **THE UNOBLIGATED BALANCES OF AMOUNTS CURRENTLY IN THE MERGED SURPLUS (MS) AUTHORITY WERE CANCELLED ON DECEMBER 5, 1990.** This includes the unobligated balances that expired at the end of FY 1988 and prior years.
2. **MOST OBLIGATED BALANCES OF AMOUNTS CURRENTLY IN THE MACCOUNTS THAT ARE OVER 5 YEARS OLD WERE CANCELLED ON MARCH 6, 1991.** This includes the obligated balances that expired at the end of FY 1983 and prior years, except **FOR PAYMENTS THAT WERE MADE BY MAY 5, 1991.**
3. **THE REST OF THE OBLIGATED BALANCES IN THE MACCOUNTS ARE CANCELLED, AT THE END OF THE FOLLOWING FISCAL YEARS:**

Years Obligated Balances Expired for new Obligations	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
FY 1984	M Account	Closed									
FY 1985	M Account	M Account	Closed								
FY 1986	M Account	M Account	M Account	Closed							
FY 1987	M Account	M Account	M Account	Closed							
FY 1988	M Account	M Account	M Account	Closed							

4. **THE UNOBLIGATED BALANCES IN THE CURRENT SURPLUS FUNDS ARE PLACED WITH THE OBLIGATED BALANCES IN THE CURRENT EXPIRED ACCOUNTS AND CANCELLED AS FOLLOWS:**

FY 1989	Expired	Expired	Expired	Expired	Closed	
FY 1990	Expired	Expired	Expired	Expired	Expired	Closed

5. **ALL FUTURE EXPIRED BALANCES WILL BE CANCELED AFTER 5 YEARS.**

Years Balances Will Expire:											
FY 1991	Unexpired	Expired	Expired	Expired	Expired	Expired	Closed				
FY 1992		Unexpired	Expired	Expired	Expired	Expired	Expired	Closed			
FY 1993			Unexpired	Expired	Expired	Expired	Expired	Expired	Closed		
FY 1994				Unexpired	Expired	Expired	Expired	Expired	Expired	Closed	
FY 1995					Unexpired	Expired	Expired	Expired	Expired	Expired	Closed

APPENDIX G**List of Cancellation Dates for Balances in Fixed Accounts**

DATE	BALANCES	DATE	BALANCES
12/5/90	Unobligated balances that expired at the end of FY 1988 or prior fiscal years.	9/30/94	Obligated and unobligated balances that expired at the end of FY 1989.
3/6/91	Obligated balances that expired at the end of FY 1983 or prior fiscal years.	9/30/95	Obligated and unobligated balance that expired at the end of FY 1990.
9/30/91	Obligated balances that expired at the end of FY 1984.	9/30/96	Obligated and unobligated balances that will expire at the end of FY 1991.
9/30/92	Obligated balances that expired at the end of FY 1985.	9/30/97	Obligated and unobligated balances that will expire at the end of FY 1992.
9/30/93	Obligated balances that expired at the end of FY 1986, FY 1987, and FY 1988.	9/30/98	Obligated and unobligated balances that will expire at the end of FY 1993.

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CHAPTER 1233

PROTESTS, DISPUTES, AND APPEALS

SUBCHAPTER 1233.1--PROTESTS

1233.104 Protests to GAO.

(a) *General procedures.* The HCA has the responsibility to prepare and provide to the General Accounting Office (GAO) the agency report with the information required by (FAR) 48 CFR 33.104(a). The agency report shall be coordinated with legal counsel before the report is signed and sent to GAO.

(b) *Protests before award.* The authority of the HCA under (FAR) 48 CFR 33.104(b) is nondelegable. The HCA has the responsibility to prepare and provide to GAO the written finding with the information required by (FAR) 48 CFR 33.104(b)(1). The written finding shall be coordinated with legal counsel before the HCA affirms its approval by signing the written finding and sending it to GAO. A copy of the signed written finding and the signed written notice to GAO shall be provided to the SPE within 2 working days after they are sent to GAO. In addition, the applicable Congressional and public affairs offices shall be informed of this action in accordance with OA policies and procedures.

(c) *Protests after award.* The authority of the HCA under (FAR) 48 CFR 33.104(c) is nondelegable. The HCA has the responsibility to prepare and provide to GAO the written finding with the information required by (FAR) 48 CFR 33.104(c)(2). The written finding shall be coordinated with legal counsel before the notice is signed by the HCA and sent to GAO.

(g) *Notice to GAO.* The authority of the HCA under (FAR) 48 CFR 33.104(g) is nondelegable. The written notice shall be coordinated with legal counsel before the notice is signed by the HCA and sent to GAO. A copy of all notices to GAO submitted in accordance with (FAR) 48 CFR 33.104(g) shall be provided to the SPE within 2 working days after they are sent to GAO.

1233.105 Protests to GSBCA.

(c) The HCA has the responsibility to prepare and provide to the GSBCA the protest file required by (FAR) 48 CFR 33.105(b) and the agency answer required by (FAR) 48 CFR 33.105(c). The protest file and the agency answer shall be coordinated with legal counsel before being sent to the GSBCA.

(d)(2) The authority of the agency head under (FAR) 48 CFR 33.105(d)(2) is delegated to the HCA. The format to be followed for the requisite D&F is contained in Appendix A.

SUBCHAPTER 1233.2--DISPUTES AND APPEALS

1233.203 Applicability.

(b) The authority of the agency head under (FAR) 48 CFR 33.203(b) is delegated to the HCA.

1233.212 Contracting officer's duties upon appeal.

Upon receipt of notice of appeal by a contractor, the contracting officer will notify OA legal counsel, who will appoint an attorney to represent the Government before the DOT BCA (S-20). The DOT BCA procedures are contained in 48 CFR Chapter 63.

1233.213 Obligation to continue performance.

The contracting officer shall use the clause at (FAR) 48 CFR 52.233-1, Disputes, with its Alternate I, where continued performance is vital to national security, the public health and welfare, critical/major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impractical.

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CHAPTER 1236

CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBCHAPTER 1236.2--SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

1236.201 Evaluation of contractor performance.

(a)(4) The authority of the HCA under (FAR) 48 CFR 36.201(a)(4) is retained by the HCA.

(c)(1) Performance reports shall be distributed in accordance with OA procedures.

(c)(2) Performance reports shall be considered when completing DOT Form 4200.1, Determination of Prospective Contractor Responsibility, as set forth in TAM 1209.105-2.

1236.203 Government estimate of construction costs.

(a) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation shall be removed only when the estimate is made public in accordance with the instructions below.

(b) If the acquisition is by sealed bidding, a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

(c) If the acquisition is by negotiation, the following procedures apply:

(1) The overall amount of the Government estimate shall not be disclosed prior to award;

(2) At the time of award, the "For Official Use Only" designation on the Government estimate shall be removed; and

(3) After award, the Government estimate may be revealed, upon request.

1236.206 Liquidated damages.

Liquidated damages provisions are generally appropriate in construction contracts in accordance with the provisions of (FAR) 48 CFR Subpart 11.502.

1236.208 Concurrent performance of firmfixed-price and other types of construction contracts.

The authority of the HCA under (FAR) 48 CFR 36.208 is delegated to the COCO.

1236.209 Construction contracts with architect-engineer firms.

The authority of the agency head under (FAR) 48 CFR 36.209 is delegated to the HCA or designee no lower than flag officer or SES level. The restriction against awarding a construction contract to the architect-engineer (A-E) firm that designed the project, or its subsidiaries or affiliates, applies to unsolicited proposals as well as those solicited by the Government.

1236.212-70 Contracting with the National Institute of Building Sciences.

(a) The National Institute of Building Sciences (NIBS) was chartered in 1974 to provide advice to the public and private sectors on issues involving new building technology and the building regulatory process. Pub. L. 93-383, Housing and Community Development Act of 1974, specifically authorizes agencies to contract with and accept contracts from the NIBS for specific services where deemed appropriate by the responsible Federal officials involved. NIBS provides assistance or advice on building-related matters by processing:

(1) On-line databases on current developments in building science and technology in areas such as architecture and engineering, products and materials, health and safety, and codes and standards; and

(2) Information pertaining to asbestos in public buildings and lead-based paint poisoning, energy efficiency in offices and industrial buildings, and seismic safety of buildings.

(b) Section 809(g)(3) of Pub. L. 93-383 expressly authorizes agencies and departments to contract with NIBS. In this regard, the exception to full and open competition at (FAR) 48 CFR 6.302-5 may be used, if the contracting officer determines this to be an appropriate exception, to award such contracts. However, the exception to full and open competition at (FAR) 48 CFR 6.302-1 should be used when it is determined that NIBS, because of its unique capabilities and charter, is the only source that will satisfy the requirement.

(c) The synopsis requirements at (FAR) 48 CFR 5.2 are applicable unless a waiver is granted pursuant to (FAR) 48 CFR 5.202(b).

(d) Further information concerning the services offered by NIBS may be obtained by writing to NIBS at 1201 L Street, N.W., Washington, DC, 20005, or by telephoning (202) 289-7800.

1236.213-70 Report of proposed Federal construction.

(a) Section 1.4 of the Davis-Bacon Procedural Rules, 29 CFR Part 1, Procedures for Predetermination of Wage Rates, requires agencies using wage determinations under the Davis-Bacon Act, among other statutes, to furnish the Administrator, Department of Labor (DOL), a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction.

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(9) Develop a rank order listing of at least three firms considered most highly qualified to perform the required work, based on the numerical evaluation ratings of the firms on the preselection list.

(10) Prepare a report which shall include in sufficient detail:

- (i) The extent of the board's review and evaluation;
- (ii) The list described in paragraph (i) of this section;
- (iii) Recommendations; and
- (iv) Considerations on which the recommendations are based.

(d) The authority of the agency head under (FAR) 48 CFR 36.602-3(d) is delegated to the COCO.

1236.602-4 Selection authority.

(a) The authority of the agency head under (FAR) 48 CFR 36.602-4(b) is delegated to the COCO.

(b) The recommendations of the evaluation board will normally be approved, unless the report does not adequately support the recommendations. If recommendations are not approved, the A-E evaluation board shall be required to reconvene until an acceptable set of recommendations is agreed upon. The approved report shall serve as authorization for the contracting officer to commence negotiations with the A-E firm ranked number one by the A-E evaluation board.

1236.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

OAs are authorized to use either of the short selection processes of (FAR) 48 CFR 36.602-5.

(b) *Selection by the chairperson of the board.* The authority of the agency head under (FAR) 48 CFR 36.602-5(b)(2) is delegated to the COCO.

1236.603 Collecting data on and appraising firms' qualifications.

Because it is DOT policy to establish ad hoc evaluation boards instead of a permanent board to select A-E firms, each OA shall establish or designate an office or offices to meet the requirements of (FAR) 48 CFR 36.603(a).

1236.604 Performance evaluation.

(a)(5) The authority of the HCA under (FAR) 48 CFR 36.604(a)(5) is retained by the HCA.

(c) Performance reports shall be distributed in accordance with OA procedures.

1236.606 Negotiations.

1236.606-70 General.

The limitation on A-E fees of six percent of the estimated construction cost (see (FAR) 48 CFR 15.903(d)) applies to all services that are an integral part of the production and delivery of plans, designs, drawings and specifications of a construction project. The limitation, however, does not apply to the cost of investigative and other services including but not limited to the following:

- (a) Development of program requirements (scope of work);
- (b) Determination of project feasibility;
- (c) Preparation of drawings of an existing facility, where current drawings are not available;
- (d) Subsurface investigations (soil borings);
- (e) Structural, electrical and mechanical investigations of an existing building, where current information is not available;
- (f) Surveys: topographic, boundary, utility;
- (g) Preparation of models, color renderings, photographs or other presentation materials;
- (h) Travel and per diem for special presentations;
- (i) Supervision and inspection of construction;
- (j) Preparation of operating and maintenance manuals; and
- (k) Master planning.

1236.609 Contract clauses.

1236.609-1 Design within funding limitations.

(c) The authority of the HCA under (FAR) 48 CFR 36.609-1(c) is delegated to the COCO.

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CHAPTER 1237

SERVICE CONTRACTING

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CHAPTER 1237

SERVICE CONTRACTING

SUBCHAPTER 1237.1--SERVICE CONTRACTS--GENERAL

1237.106 Funding and term of service contracts.

(b) The authority of the agency head under (FAR) 48 CFR 37.106(b) is delegated to the COCO with further authority to redelegate. The authority and delegation in this section does not apply to the Coast Guard.

1237.112 Government use of private sector temporaries.

(a) *Definitions.* The following words and terms are used in and defined for this subsection.

"Critical need" means a sudden or unexpected occurrence; an emergency; a pressing necessity; or an exigency. Such occasions are characterized by additional work or deadlines required by statute, executive order, court order, regulation, or formal directive from the Secretary of Transportation or designee. A recurring, cyclical peak workload, by itself, is not a critical need.

"Federal supervisor" means an individual employed by DOT to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

"Parental and family responsibilities" means situations such as absence for pregnancy, childbirth, child care, and care for elderly or infirm parents or other dependents.

"Temporaries" means those employees of a temporary help service firm who are supervised and paid by that firm and whom that firm assigns to perform the contract work assignments.

"Temporary help service firm" means a contractor which provides services that are performed by its pool of employees possessing the appropriate work skills for brief or intermittent periods. The firm is the legally responsible employer and maintains that relationship during the time its employees are assigned to the contract. The firm recruits, tests, hires, trains, assigns, pays, provides benefits and leave to, and as necessary, addresses performance problems, disciplines, and terminates its employees. The firm is responsible for payroll deductions and payment of income taxes, social security (FICA), unemployment insurance, and worker's compensation, and any required liability insurance and bonding.

(b) *Policy.* Temporary help services may be acquired for the brief or intermittent use of the skills of private sector temporaries. The acquisition of these services are subject to the following conditions:

(1) The temporary will be performing the work of an employee who will be absent from the position for a temporary period (short-term) because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service.

(2) In the judgment of the head of the requesting office, the temporary help is for a critical need which cannot be delayed.

(c) *Exceptions.* Temporary help services cannot be acquired--

(1) To displace a Federal employee;

(2) For the work of managerial or supervisory positions;

(3) For the work of or to fill an SES employee or position; or

(4) To circumvent the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service.

(d) *Certification of need.* The requirements office must submit Appendix A, Checklist for Private Sector Temporary Personnel, with the procurement request (PR) for temporary help services. The entire checklist must be completed or the contracting officer shall reject the PR.

(e) *Acquisition and contract requirements.* The contracting officer shall comply, as applicable, with all of the policy and procedures of the FAR to acquire temporary help services by contract. The following limitations apply:

(1) The contract shall not create or imply an employer-employee relationship between the Government and the contractor's temporary, and the temporary shall not be eligible for civil service employee benefits, including retirement; and

(2) The contract shall not require that a temporary at an office within its local commuting area (as defined by the OA's personnel office) work for more than 45 workdays in a 6-month period. However, if the Government employee's absence or DOT critical need continues to exist, the contractor must provide a different temporary to continue the work, and the replacement temporary must be provided by the close of the 45th workday. To avoid the appearance of an employer-employee relationship, a temporary cannot work on one job assignment for more than 120 days.

(f) *Extended services.*

(1) *Approval by the Office of Personnel Management (OPM).* If the requiring office desires to retain the services of the same temporary beyond 45 workdays or needs to use a temporary beyond the 120 days, the requiring office must submit information to its personnel office for appropriate action. This information shall be submitted in time for the personnel office to obtain approval from the OPM office which covers the site where the work is being performed. OPM should receive the notification at least 7 to 10 days before the 120-day maximum period expires. The information required for submission is:

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- (i) A full justification for the extension beyond the 120-day period;
- (ii) The new termination date or number of extra workdays needed;
- (iii) The total number of days worked by the current temporary and the reason for using the individual;
- (iv) The importance of the work to be done and the impact of delay or interruption; and
- (v) The actions taken to find other solutions, and the availability of external and internal candidates.

(2) *Approval by the OA personnel official.* An authorized official in the OA personnel office of the requesting office may authorize an extension to use the same temporary in those cases where the services are needed to perform work of a Government employee who is on maternity leave. The extension shall not exceed 20 workdays.

(g) *Contract administration.* The office receiving the temporary shall ensure that an employer-employee relationship is not established with the contractor's temporary. However, technical advice, assignment of task, task-related instructions, office orientation, and review of the temporary's work products are necessary to ensure that the temporary performs the requisite services.

1237.112-70 Stenographic reporting services.

(a) The authority of the head of the agency under 5 U.S.C. 3109 (to procure stenographic services by contract) is delegated to the contracting officer.

SUBCHAPTER 1237.2--ADVISORY AND ASSISTANCE SERVICES

1237.203 Policy.

1237.203-70 Services of individual experts and consultants.

(a) The authority of the head of the agency under 5 U.S.C. 3109 (to procure by contract the temporary or intermittent services of experts or consultants or an organization thereof, if such an acquisition is authorized by an appropriation or other statute) is delegated to the COCO.

(b) The rate of pay for services rendered by an expert or consultant is limited and cannot be exceeded unless specifically authorized by the appropriation or other statute which authorizes the acquisition of the services. The rate of pay for services rendered by a consultant to an advisory committee is governed by 41 CFR, Subpart 101-6.10.

(c) Since the statutes governing the acquisition of and rate of pay for these services are subject to change, the contracting officer shall seek the advice of the OA's legal counsel prior to taking action on the procurement request for such services.

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| 1237.203-71 Third party benefits.

When a contract calls for providing technical assistance or advice that will benefit a third party, these services are advisory and assistance in the context of any regulation, statute, or guidance on these services. While these services may ultimately benefit an external or third party such as grantees or the states, the services are being acquired to accomplish the program objectives of DOT.

| 1237.205 Contracting officer responsibilities.

In addition to the requirement of (FAR) 48 CFR 37.205, the contracting officer shall ensure that the written, signed certificate required by (FAR) 48 CFR 52.209-8, Organizational Conflicts of Interest--Advisory and Assistance Services, is obtained from the apparent successful offeror prior to award. The certificate shall be reviewed and the appropriate action taken utilizing the guidance provided under (FAR) 48 CFR Part 9.

| 1237.205-70 Accounting and information system

All advisory and assistance services shall be reported to the DOT Contract Information System in accordance with the procedures under TAM 1204.6.

CHECKLIST FOR PRIVATE SECTOR TEMPORARY PERSONNEL

PART I

(Must be completed by the Requesting Office)

1. The services of private sector temporaries are needed for the following reason *(Note: The Office of Personnel Management regulation authorizes the use of private sector temporaries only in the short-term situations described below. Please check the situation which exists in your office or work unit):*

a. {____} An employee *(DO NOT insert employee's name)* currently filling the position of *(insert the title, series, and grade of the employee)* _____ is absent from this position for a temporary period (short-term) because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other circumstances that are not shown to be compelling in the judgment of the requesting office.

b. {____} I have determined that work must be carried out for a temporary period cannot be delayed because of a critical need. The critical need is:

2. We will need these services starting on _____ and ending on _____. *(Note: If the required services are for other than full-time continuing, also show the total number of days _____ and/or total number of hours _____ the services will be needed.)* Also, this need cannot be met with current employees within the time available, by the date, and for the duration of time the help is needed. *(Note: Length of time for using a private sector temporary must not exceed 45 work days for the same individual outside temporary. If an appropriate need still exists at the end of the 45 days, a different outside temporary may be secured for up to 45 additional work days. Also, there is an overall 120-day ceiling on using outside temporaries in any one situation.)*

3. A full description of the needed work is as follows or is attached *(Note: Do not use the Government employee's position description of the Government employee since it is too general for the purpose of describing the work to be performed by the temporary):*

4. The person must have the following knowledge, skills and abilities in order to work:

5. The person may be required to use the following equipment (*List the equipment that will be used, showing the make and model of personal computer, word processor, typewriter, mail sorter, etc.*)

6. If a specific personal computer program is required, show the name.

7. Describe the work environment by stating the type of setting in which the temporary will be working (e.g., general office, front office, typing pool, information desk, mailroom, warehouse, etc.).

8. List any physical endurance, such as a significant amount of walking (e.g., mail clerk), bending and lifting (e.g., warehousing), standing (e.g., clerk-photocopying), etc. that the work will require.

9. List any other special conditions of the work (e.g., security clearance requirements).

10. List administrative information, such as address and location of the workplace including building and room number; the daily working hours and lunchtime; the name, address, room number, and telephone number of the person to whom the temporary should report on the first day of work. For example:

U.S. Department of Transportation
(Insert OA's name)
400 Seventh Street, SW
Washington, DC 20590

Temporary Worker Should Report to:

in Room _____

11. I certify that the statements under #1 through #10 are correct to the best of my knowledge, and the temporary or use of these temporary services:

- (a) _____ Will not displace a Federal employee;
 - (b) _____ Is not for the work of managerial or supervisory positions;
 - (c) _____ Will not be for the work of or to fill an SES employee or position;
- and
- (d) _____ Does not circumvent the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service.

(Signature of Head of Requesting Office)

(Title of Office Official)

(Date)

CHECKLIST FOR PRIVATE SECTOR TEMPORARY PERSONNEL

PART II

(Must be completed by the Personnel Office)

1. I have reviewed Part I to ensure compliance with regulatory requirements and to ensure that the information is sufficient to contract with the private sector. I certify the following:

(a) That the need ___ can ___ cannot be met through the direct appointment of temporary employees within the time available, by the date, and for the duration of time the work is needed;

(b) That there ___ are (see attachment) ___ are no qualified candidates on the applicant supply file or on the reemployment priority list; and

(c) That there ___ are (see attachment) ___ are no qualified disabled veterans with a compensable service-connected disability of 30 percent or more under 5 U.S.C. 3112, who are immediately available for temporary appointment of the duration required.

(Signature)

(Title of OA's Personnel Official)

(Date)

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CHAPTER 1238

FEDERAL SUPPLY SCHEDULE CONTRACTING

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1238.000 Scope of part.

SUBCHAPTER 1238.1--FEDERAL SUPPLY SCHEDULE PROGRAM

I 1238.101 General.

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CHAPTER 1238

FEDERAL SUPPLY SCHEDULE CONTRACTING

1238.000 Scope of part.

The procedures for ordering from the GSA FSS contracts are set forth in (FAR) 48 CFR Part 8 and TAM Chapter 1208.

SUBCHAPTER 1238.1--FEDERAL SUPPLY SCHEDULE PROGRAM

1238.101 General.

(e) Multiple award schedules ((FAR) 48 CFR Part 8.404) contain no pricing information and neither contractor catalogs nor price lists are maintained or distributed by GSA. To initiate automatic receipt of contractor publications, ordering activities should send GSA Form 457 to GSA's Centralized Mailing List Service, P.O. Box 6477, Fort Worth, Texas, 76115. GSA will generate mailing lists, which are provided to contractors to distribute their catalog and/or price lists when FSS contract awards are made. A copy of GSA Form 457 is provided in TAM 1253.

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CHAPTER 1241

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CHAPTER 1241

ACQUISITION OF UTILITY SERVICES

SUBCHAPTER 1241.5--SOLICITATION PROVISION AND CONTRACT CLAUSES

1241.501 Solicitation provision and contract clauses.

(a) The contracting officer may prepare and utilize variations of the provisions and clauses prescribed under (FAR) 48 CFR 41.501(b), (c), and (d) to accommodate specific circumstances which may exist for a proposed acquisition.

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CHAPTER 1242

CONTRACT ADMINISTRATION

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- Appendix B Evaluation of contractor's performance.
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1242. 708 Quick-closeout procedure.

(a)(2)(i) Contracting officers may use the quick-closeout procedures for the settlement of indirect costs under contracts when the estimated amount (excluding any fixed fee) of the contract is \$3 million or less.

SUBCHAPTER 1242. 8 - DISALLOWANCE OF COSTS.

1242. 803 Disallowing costs after incurrence.

(a) *Contracting officer receipt of vouchers.* When contracting officers receive the original voucher/invoice directly from the contractor, the voucher/invoice shall be forwarded immediately to the cognizant payment office for the purpose of establishing the payment due date required by the Prompt Payment Act. The contractor shall be advised to forward future vouchers/invoices to the address(es) cited in the contract schedule. Upon receipt of a proper voucher, the contracting officer shall process the voucher in accordance with the procedures of TAM 1232. 70. These procedures are minimum requirements which may be supplemented by OA procedures.

(b) *Auditor receipt of vouchers.*

(1) At the discretion of the contracting officer, the contract may authorize the contractor to send vouchers directly to the cognizant auditor. If this authority is granted, the auditor shall be advised to send the voucher to the contracting officer with a recommendation concerning approval, disapproval, or suspension of payment. The auditor shall not be allowed to approve and forward vouchers to the payment office or to suspend payment of questionable costs.

(2) The auditor shall not be allowed to issue the contractor a notice of contract costs suspended and/or disapproved.

(3)(ii) When the contractor files a claim for unreimbursed costs under the Disputes clause of the contract, contracting officers shall process the claim in accordance with OA procedures.

SUBCHAPTER 1242. 14 - TRAFFIC AND TRANSPORTATION MANAGEMENT

1242. 1401 General.

(b) Contracting officers shall contact their local or OA Headquarters transportation office for assistance concerning the tasks delineated under (FAR) 48 CFR 42. 1401.

1242. 1403 Shipping documents covering f.o.b. origin shipments.

(a) Contracting officers shall provide instructions in the contract to the contractor for obtaining a Government Bill of Lading (GBL). These instructions shall be coordinated with the local or OA Headquarters transportation office authorized to issue GBLs. To avoid delays in the shipment of items under the

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contract, the instructions shall require the contractor to provide the contracting officer with advance notification (in working days) of the need for the GBLs.

(b) When the contract authorizes the shipping costs to be shown as a separate item on the voucher/invoice, the contract shall reflect estimated shipping costs as a separate contract line item

1242.1404 Shipments by parcel post or other classes of mail.

1242.1404-1 Parcel post eligible shipments.

(b)(1) The USCG is authorized under U.S. Postal Service Permit Imprint Number G-157, Agency Code 209, to use penalty indicia mail and may also authorize contractors to do so. However, contracting officers shall ensure that all contractor mailings are in accordance with the requirements described in paragraph 137.272 or Section 137.28 of the U.S. Postal Service Domestic Mail Manual. All other OAs must submit a deviation request, in coordination with the OA's mail management office to: U.S. Postal Service, Official and International Mail Accounting Division, Office of Accounting, Washington, DC, 20260-5230.

1242.1500 Scope of subchapter.

This subchapter provides policies and procedures for evaluating, maintaining, and releasing contractor performance information under DOT contracts.

1242.1502 Policy.

The HCA is responsible for ensuring that a contractor performance evaluation system is established to meet the requirements of (FAR) 48 CFR 42.15. Consideration should be given to evaluating job orders, task orders and delivery orders which exceed \$100,000. Interim evaluations should be performed on contracts exceeding one year in duration. This will assist contractors with improving marginal performance and identifying any major deficiencies. It will also facilitate performance evaluations at contract completion, as well as determining whether to exercise contract options, if any. Performance evaluations should not be done if performance was completed prior to July 1, 1995.

1242.1503 Procedures.

(a) The COCO or designee shall determine who will evaluate contractors' performance. Contracting officer's technical representative, contract specialists or administrators, and users are candidates likely to be selected to perform the evaluation. An evaluation should be obtained from a person who monitored contractor performance when that individual's assignment of duties or employment terminates prior to physical completion of the contract. Appendix B or a like or similar format may be used to evaluate the contractor's performance. The areas of performance to be selected for evaluation should be tailored to the type of supplies or services normally acquired by the contracting activities and the type of contract. HCAs shall ensure uniformity of the evaluation criteria within their contracting activities.

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(c) (FAR) 48 CFR 42.15 provides prohibitions on the release of the performance evaluations or information. Freedom of Information Act (FOIA) requests for copies of evaluations must be processed in accordance with FOIA, as implemented by DOT under 49 CFR Part 7 and any supplementing OA requirements (see TAM Chapter 1224). It is DOT's policy that all "non-Federal entities or personnel" are considered the public for the purpose of FOIA requests. When evaluation information is released to other Federal agencies, it should be provided with a written understanding that it is nonpublic information that must be evaluated under FOIA principles if a request for disclosure of the information is received.

(e) Even though the retention period for this source selection information is three years (see (FAR) 48 CFR 42.1503), the evaluation, any contractor rebuttal and OA decision becomes a part of the contract file. Therefore, disposal of the evaluation information must be accomplished in accordance with TAM 1204.805.

SUBCHAPTER 1242. 70- -CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE

1242. 7000 Contract clause.

The Contracting Officer's Technical Representative (COTR) designation and contractor notification requirements referenced in (TAR) 48 CFR 1252.242-73 are contained in this subchapter.

1242. 7001 Scope of subchapter.

This subchapter provides policy and procedures concerning the selection, certification, appointment, and termination of a COTR.

1242. 7002 Selection.

Reserved.

1242. 7003 Certification.

Reserved.

1242. 7004 Appointment.

(a) Contracting officers may delegate technical representatives to perform certain functions during the term of the contract. These functions may include such things as inspecting, testing, accepting contract line items, surveilling the contractor's performance, controlling Government-furnished property, reviewing and recommending to the contracting officer approval/disapproval of vouchers/invoices, etc.

(b) When it is decided to assign a COTR to a contract, a letter of designation in a format substantially the same as Appendix A shall be addressed and sent to the person selected to serve as the COTR. The content of Appendix A should be modified to reflect the circumstances of the contract. A separate letter must be written for each contract, and must include the following information, as a minimum

(1) Contracting officer's and contract specialist's/administrator's name and telephone number;

(2) Contract number;

(3) COTR's specific areas of responsibilities and authorities;

(4) COTR's specific limitations;

(5) Detailed description of the types of files and the content of the files to be maintained by the COTR;

(6) Emphasis on ethics, conflict of interest, and standards of conduct, including a copy of (FAR) 48 CFR Part 3, (TAR) 48 CFR Part 1203, TAM Chapter 1203, and other regulations, statutes, or directives governing these topics (e.g., 5 CFR Part 2635 Standards of Conduct);

(7) Emphasis on unauthorized contract commitments;

(8) A requirement that the COTR evaluate the contractor's performance within 30 days after the contractor has met all terms and conditions of the contract (see Appendix B); and

(9) A requirement that the COTR acknowledge receipt and acceptance of the letter and return it to the contracting officer.

(c) The contractor shall be notified of the COTR designation in writing, in a format substantially the same as Appendix C, and a copy of the COTR letter of appointment (Appendix A) also shall be provided to the contractor. The contracting officer shall provide the COTR with a copy of the COTR designation notification (Appendix C) that was sent to the contractor.

1242.7004-1 Limitations of a COTR

(a) Contracting officers shall not delegate to the COTR the following authorities:

(1) The authority to issue task or delivery orders against a contract or any of the agreements defined under (FAR) 48 CFR Subpart 16.7;

(2) The authority to change any of the terms and conditions of a contract or any of the agreements defined under (FAR) 48 CFR Subpart 16.7;

(3) The authority to sign contracts or contract modifications;

(4) The authority to write letters to the contractor that will impact the cost or schedule of the contract. The authority to otherwise write letters to a contractor must require the COTR to send a copy of the letters to the contracting officer for the contract file;

(5) The authority to approve contractors' vouchers under cost-reimbursement contracts (however, the COTR may review the vouchers and make payment

recommendations to the contracting officer). If the COTR is delegated the authority to review and approve invoices under fixed price contracts, the COTR must be required to submit to the contracting officer, a copy of the approved invoices and the documents which authorized the finance office to make payment; or

(6) The authority to commit the Government to any adjustments to the price or cost of the contract or order (e.g., the contracting officer must sign all prenegotiation and price negotiation memoranda including those which may be combined into one document for those adjustments valued at \$100,000 or less. The memorandum must contain the minimum information required by Appendix C of TAM 1215.8.

1242.7005 Termination.

(a) Contracting officers shall issue a Notice of Termination of Appointment in writing to the COTR. A copy of the letter (or a separate notice of termination of appointment) shall be provided to the contractor.

(b) COTRs may be terminated for reasons (not all inclusive) such as exceeding their authorities and limitations, conflicts of interest, unethical conduct, failure to perform, reassignment/resignation/retirement, and upon completion of the contract to which assigned.

APPENDIX A

Subj: Appointment as a Contracting Officer's Technical Representative

From: *(Insert name of contracting officer)*

To: *(Insert name of prospective COTR)*

You are hereby appointed as the Contracting Officer's Technical Representative (COTR) under Contract No. *(Insert number)* with the *(Insert the name(s) of the contractor(s))* for *(Describe the supplies, services, or construction being purchased)*. As the COTR, your primary duty is to monitor the contractor's performance to ensure that all of the technical requirements under the contract are met by the delivery date or within the period of performance, and at the price or within the estimated cost stipulated in the contract.

In the performance of the duties delegated to you in this letter, you are cautioned that you could be held personally liable for actions taken or directions given by you to the contractor that are beyond the authorities given to you in this letter. The duties or authorities in this letter are not delegable; therefore, you must advise the Contracting Officer, *(Insert name of Contracting Officer)* or the Contract Administrator/Specialist *(Insert name of Contract Administrator/Specialist)* immediately when you are unable to perform these duties.

Your duties and limitations, as applicable to the contract you will be monitoring, are as follows:

MONITORING PERFORMANCE.

Ensure that the contractor complies with all of the requirements of the statement of work, specifications, or performance work statement, and when requested by the contractor, provide technical direction to the contractor's technical manager. This technical assistance must be within the scope of the contract (e.g., interpreting specifications, statement of work, performance work statement, etc.). When a difference of opinion between you and the contractor occurs, notify the contracting officer or the contract administrator/specialist immediately for resolution.

Ensure that the personnel being used by the contractor are of the same caliber that was originally proposed by the contractor to the Government. The experienced personnel contracted for and/or approved by the Government should not be diluted by the use of personnel with less experience. However, you may not permit changes, substitutions, or additions to personnel. Any decrease in or lack of performance shall be brought to the attention of the contracting officer or contract administrator/specialist.

You will also be required to complete the attached "Evaluation of Contractor's Performance Sheet" within 30 days after the contractor has met all terms and conditions of the contract. Note: This form shall not be used for construction and architect-engineer contracts (see (FAR) 48 CFR 36.604).

MONITORING COSTS.

Review and evaluate the contractor's progress in relation to the expenditures. When the costs expended by the contractor are not commensurate with the contractor's progress, bring this to the attention of the contracting officer or contract administrator/specialist for immediate action.

Review the contractor's invoices/vouchers for reasonableness and applicability to the contract and recommend to the contracting officer either approval, conditional approval, or disapproval for payment. The review must be completed within five days after receipt of the invoice or voucher. If you cannot meet the required review time, advise the contracting officer or contract administrator/specialist so that action can be taken to ensure Government compliance with the Prompt Payment Act, thereby avoiding the payment of interest penalties to the contractor.

CHANGES TO THE CONTRACT.

You cannot authorize the contractor to stop work, and you are not authorized to delete, change, waive, or negotiate any of the technical requirements or other terms and conditions of the contract. Should a change (monetary or otherwise) to the contract become necessary, it must be made by a contract modification issued by the contracting officer. When in doubt, contact the contracting officer or contract administrator/specialist.

Any contract change requested by the contractor must be put in writing by the contractor to the contracting officer for action; however, you should immediately advise the contracting officer or contract administrator/specialist of the proposed change since it may affect the contract price, cost, or delivery/performance schedule. When the proposed change is received by the contracting officer, you will be required to provide the contracting officer with a written analysis and rationale for the change and to evaluate any costs associated with the change.

You must also recognize and report to the contracting officer any Government required changes to the contract (e.g., items or work no longer required, changes in the specifications, etc.).

VISITS AND MEETINGS WITH THE CONTRACTOR.

Make arrangements with the contractor for periodic visits to the contractor's plant to: (1) evaluate the contractor's performance; (2) evaluate changes in the technical performance affecting personnel, the schedule, deliverables, and price or costs; (3) inspect and monitor the use of Government property, if applicable; and (4) ensure that contractor employees being charged to the contract are actually performing the work under the contract. A trip report fully documenting

all activities during the visit must be written and a copy provided to the contracting officer within three working days after the visit.

Document the file to record each meeting and telephone conversation with the contractor. A daily log book is recommended which should reflect the date, time, name, and title of individual(s) involved, the subject matter, and the details of the meeting or conversation.

INSPECTION OF CONTRACT ITEMS.

When notified by the contractor or the contracting officer, perform, in accordance with the terms of the contract, inspection, acceptance or rejection of the supplies, services, or construction. Immediately notify the contracting officer of all rejections and the reason for the action.

Review progress reports from the contractor and advise the contracting officer of any contractor problems or action required to be taken by the Government.

STANDARDS OF CONDUCT AND CONFLICT OF INTEREST.

The attached (FAR) 48 CFR Part 3 and (TAR) 48 CFR Part 1203/Transportation Acquisition Manual Chapter 1203, Improper Business Practices and Personal Conflict of Interest, provides guidance to avoid improper business practices and personal conflicts of interest and to deal with their apparent or actual occurrences. Please read these documents very carefully and contact the contracting officer should you require further information or clarification on this subject matter.

CONTRACT FILE CONTENT AND MAINTENANCE.

Establish and maintain an organized contract administration file to record all contractor and Government actions pertaining to the contract. The COTR's file is of particular importance since the documentation of your interaction with the contractor may be used in the event of litigation. In addition, an organized file facilitates an easy transition from one COTR to another if reassignment becomes necessary. The file(s) should be organized as follows:

(1) File 1 - The contract instrument (i.e., contract modifications, task orders, delivery orders, and the contractor's proposals applicable to these documents).

(2) File 2 - The COTR's delegation letter, and all correspondence between the contractor and the contracting officer, filed in chronological order.

(3) File 3 - A copy of the contractor's invoices/vouchers and any correspondence pertaining to the payments.

(4) File 4 - The COTR's trip reports and written memoranda to the file on telephone conversations or other meetings with the contractor.

(5) File 5 - A copy of the contractor's progress reports and other contract deliverables, and all correspondence pertaining to these documents.

The size of the contract may not warrant a separate folder for each file. If less than five folders are used, the sections must be tabbed to segregate each file.

Please acknowledge receipt and acceptance of this appointment by signing and returning the attached sheet to the contracting officer or contract administrator/specialist. Your appointment as the COTR under the above numbered contract is terminated upon receipt of a written notice of termination from the appointing contracting officer, the contracting officer's successor, or a higher level of authority. Please direct any questions you may have on this delegation to the contracting officer or contract administrator/specialist.

EVALUATING PERFORMANCE.

Within 30 days after the contractor has met all terms and conditions of the contract, you must evaluate the contractor's performance using the attached evaluation form which must be returned to me.

*(Typed name and signature
of the Contracting Officer)*

Attachments

I understand and accept my assignment as the Contracting Officer's Technical Representative (COTR) under Contract No. *(Insert contract number)* as outlined in your letter to me dated *(insert date of contracting officer's letter)*.

(Signature of COTR)

(Typed Name and Title of COTR)

(Effective Date)

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APPENDIX B

EVALUATION OF CONTRACTOR'S PERFORMANCE

This form **MUST** be filled out after completion of contract performance by the contractor. Guidance concerning completion of this form should be obtained from the contracting officer.

Contract/Order No.: _____ Contract type: _____

Award Date: _____ Active? Yes___No___ Date contract/order completed: _____

Total value (include options; contract modifications) \$ _____

Item description and SIC: _____

Name of Contractor:

Address of Contractor:

Type of Evaluation: ___Interim___Final for the period: _____

S O U R C E S E L E C T I O N I N F O R M A T I O N

(See FAR 3.104-5, TAR 3.104-5, and TAM 42.15)

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PART I - EVALUATION OF CONTRACTOR'S PERFORMANCE

The contractor should be evaluated using the following ratings:

E = Excellent: Contractor exceeded the requirements. Explain how.

S = Satisfactory: Contractor met the requirements. If the contractor had difficulty meeting the requirements, explain why.

U = Unsatisfactory: Contractor did not meet all of the requirements. Explain all noncompliances or unsatisfactory performance, and whether and how the contractor was at fault, where applicable.

N/A = **Not Applicable**. Does not apply to the contract.

1. **Cost/Price Control**. Rating: **E**___**S**___**U**___**N/A**___. Consider: Did the contractor complete the contract within the contract amount or did the contractor experience cost growth?

2. **Schedule Control**. Rating: **E**___**S**___**U**___**N/A**___. Consider: Did the contractor meet the original completion date? Request an extension due to reasons within its control? Finish ahead of schedule?

3. **Contract Administration**. Rating: **E**___**S**___**U**___**N/A**___. Consider: Did the contractor respond to Government correspondence in a timely manner? Were unnecessary cost/price change proposals submitted? Were Government requested price changes submitted and negotiated promptly? Were contract modifications promptly executed? Were the subcontracts properly administered? Did the contractor comply with its subcontracting plan? Were progress reports submitted on time? Were invoices submitted correctly? Were contract discrepancies/problems reported promptly? Were major subcontracts administered properly?

4. **Responsiveness to Government**. Rating: **E**___**S**___**U**___**N/A**___. Consider: Were complaints from the Government resolved in a reasonable and cooperative manner? Were telephone calls responded to promptly? Were controversial issues resolved amicably? Was the contractor reasonable and responsive to the Government's needs?

5. **Contract Compliance with Technical Requirements**. Rating: **E**___**S**___**U**___**N/A**___. Consider: Were all of the contract requirements met? Were the objectives of the statement of work met? Were problems resolved? Will the delivered items or services be able to be used for the purpose intended? If not useable, why not?

SOURCE SELECTION INFORMATION

(See FAR 3.104-5, TAR 3.104-5, and TAM 42.15)

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PART I - EVALUATION OF CONTRACTOR'S PERFORMANCE-con'td

6. **Key Personnel.** Rating: E S U N/A. Consider: Did the personnel have the knowledge and expertise necessary to perform the technical requirements? Were changes in key personnel made? How often were they made?

7. **Recommendation:** Would you recommend award to this contractor for future contracts for like or similar requirements? Yes No . If no, please fully explain.

Name of Evaluator: _____ Phone Number: _____

(Technical)

Title of Evaluator: _____

Signature: _____ Date: _____

Name of Evaluator: _____ Phone Number: _____

Optional: (End User)

Title of Evaluator: _____

Signature: _____ Date: _____

Name of Evaluator: _____ Phone Number: _____

Title of Evaluator: Contracting Officer

Signature: _____ Date: _____

In accordance with FAR 42.15, the contracting officer must allow the contractor a minimum of thirty days to review this evaluation form

SOURCE SELECTION INFORMATION

(See FAR 3.104-5, TAR 3.104-5, and TAM 42.15)

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PART II - EVALUATION OF CONTRACTOR'S PERFORMANCE

Contractor's Review

I have reviewed the performance evaluation of (*insert name of contractor*) under (*insert contract/task order number*). I do concur____ I do NOT concur____ with it. The attached comments consisting of (*insert number of pages*) are returned herewith for review by an individual at a level above the contracting officer responsible for this contract.

*Name of Authorized Reviewer:*_____ *Phone Number:*_____

*Title of Reviewer:*_____

*Signature:*_____ *Date:*_____

S O U R C E S E L E C T I O N I N F O R M A T I O N

(See FAR 3.104-5, TAR 3.104-5, and TAM 42.15)

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PART III-EVALUATION OF CONTRACTOR'S PERFORMANCE

Federal Agency Review of Contractor's Comments.

I have considered the comments submitted on the performance evaluation of (*insert name of contractor*) under (*insert contract/task order number*). The attachment to this form, consisting of (*insert number of pages*), is my final decision on this evaluation.

Name of Reviewer: _____ *Phone Number:* _____

Title of Reviewer: _____

Signature: _____ *Date:* _____

S O U R C E S E L E C T I O N I N F O R M A T I O N

(See FAR 3.104-5, TAR 3.104-5, and TAM 42.15)

Sample Transmittal Letter

ZYX Company
Somewhere, World

Dear Person:

Enclosure (1) is a copy of the Government's evaluation of your performance under (*insert contract/task order number*) as required by Federal Acquisition Regulation (FAR) 42.15. It is requested that you review and return this form with any written comments by (*insert the due date*).

The (*insert the name and title of the Government person who will resolve any rebuttals*) will resolve any disputes or rebuttals concerning this performance evaluation. The decision will be final and will not be subject to the Disputes clause under the contract. All of the evaluation information will be protected where required by law or regulation.

It is requested that you advise me whether the evaluation of your company may be released outside of the Federal, state, or local governments.

Sincerely,

(typed name)
Contracting officer

Enclosure

APPENDIX C

ABCD Corporation
000 Marsvenus Ave.
Planet, USA 11111-0000

In accordance with (TAR) 48 CFR 1252.242-73, Contracting Officer's Technical Representative (COTR), I have appointed *(Insert full name of the COTR)* as my technical representative under Contract No. *(Insert contract number)*. A copy of the letter of appointment is enclosed. This appointment is effective until this contract is completed or a written notice of termination is received from me, the contracting officer responsible for this contract, whichever occurs first.

As the COTR, this person has the authority to monitor the technical progress of the supplies, services, or construction that are required to be delivered under the contract. This includes visits to your plant or the place of performance, meetings and telephone conversations with your personnel, inspection, acceptance, or rejection of the contracted items and other duties that may be authorized by me.

The COTR cannot authorize or order the cessation of contract work nor delete, change, or waive any of the technical requirements or other terms and conditions of the contract. Should you desire a change (monetary or otherwise) to the contract, you must submit a written request to me for consideration. If appropriate, the change will be effected by a contract modification, after discussions and/or negotiations. Whenever a difference of opinion between you and the COTR occurs, please notify me or the contract administrator/specialist *(Insert name and telephone number)* immediately for resolution. You should also contact this person when you are unable to contact the COTR on a technical matter and for assistance on all other matters pertaining to this contract.

Sincerely,

*(Typed name and signature of
the Contracting Officer)*

Enclosure

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CHAPTER 1246

QUALITY ASSURANCE

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CHAPTER 1246

QUALITY ASSURANCE

SUBCHAPTER 1246. 3- -CONTRACT CLAUSES

1246. 316 Responsibility for supplies.

When the contracting officer deems it necessary, (48) CFR 52.246-6, Responsibility for Supplies, may be used in solicitations and contracts when the contract amount is not expected to exceed the simplified acquisition threshold.

SUBCHAPTER 1246. 4- -GOVERNMENT CONTRACT QUALITY ASSURANCE

1246. 401 General.

(f) The contracting officer should ensure that inspection under DOT contracts is documented in accordance with TAM 1246. 601.

SUBCHAPTER 1246. 6- -MATERIAL INSPECTION AND RECEIVING REPORTS

1246. 601 Material inspection and receiving reports.

Each OA is authorized to use Form DOT F 4220.42, Material Inspection and Receiving Report, and Form DOT F 4220.42a, Continuation Sheet, or a form substantially similar if authorized in accordance with OA procedures.

SUBCHAPTER 1246. 7- -WARRANTIES

1246. 702 General.

The following areas should also be addressed by all OAs in relation to the use of warranties in DOT contracts:

(a) Planning is an essential step in obtaining an effective warranty and should begin early enough to address warranty requirements during the development of the item. Therefore, consideration of warranty provisions and their impact shall be included within the comprehensive acquisition planning process required by (FAR) 48 CFR Part 7, (TAR) 48 CFR Part 1207, and TAM Chapter 1207.

(b) The acquisition cost of a warranty may be included as part of an item's price when cost or pricing data will clearly define cost of the warranty to the Government, or may be set forth as a separate contract line item

(c) Each OA shall establish a tracking and enforcement system, as appropriate, to identify items covered, to provide information to Government personnel about enforcing the warranty provisions, and to accumulate data relative to warranty costs.

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1246.703 Criteria for use of warranties.

Warranties should be obtained only when they are cost beneficial. To determine whether use of a warranty is cost beneficial, an analysis must be performed to compare the benefits to be derived from the warranty with its acquisition and administration costs. The analysis should examine the procurement's life cycle costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing warranties for similar supplies or services. If a warranty is determined to be appropriate, the contract file shall be documented with the reason for inclusion of a warranty and identify the specific parts, subassemblies, systems or contract line item(s) on which a warranty should apply, and shall address why a warranty is appropriate under the criteria set forth in (FAR) 48 CFR 46.703.

1246.704 Authority for use of warranties.

The COCO shall approve the use of a warranty clause in acquisitions where warranty exceeding the standard industry practices is required.

1246.708 Warranties of data.

The contracting officer shall use the criteria under (FAR) 48 CFR 46.703 to determine whether data to be delivered under a contract should be warranted.

1246.710 Contract clauses.

(c)(1) The decision to include custom tailored warranties (i.e those that are over and above the contractor's standard trade practice) in a fixed priced construction contract shall be approved by the COCO.